

IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL REGISTRY
HOLDEN AT LUSAKA AND NDOLA
(Constitutional Jurisdiction)

2018/CC/004

IN THE MATTER OF: PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

AND
IN THE MATTER OF: ARTICLE 165, 166 AND 167 OF THE CONSTITUTION OF ZAMBIA AMENDMENT ACT NO. 2 OF 2016

AND
IN THE MATTER OF: THE RIGHT OF THE MATEBO ROYAL ESTABLISHMENT TO INSTALL A CHIEF IN ACCORDANCE WITH KAONDE CULTURE, CUSTOMS AND TRADITIONS

BETWEEN:

BERNARD SHAJILWA
DICKSON BORNFACE MUTAMFU
GOODSON KABULAYI
DORIS KAFUMUKACHE
LAWRENCE MBOMENA

1ST PETITIONER
2ND PETITIONER
3RD PETITIONER
4TH PETITIONER
5TH PETITIONER

AND

ATTORNEY GENERAL
EVANS NYELETI
MICHAEL B. PWETE
EPHRAIM M. MATEYO



1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT

CORAM: Sitali, Mulenga, Mulonda, Munalula and Musaluke JJC on 18th, 19th and 20th July, 2018, at Ndola and on 15th August and 21st May 2019 at Lusaka.

For the Petitioners: Mr. M.J. Katolo and Ms. K. Tembo of Messrs Milner and Paul Legal Practitioners.

For the 1st, 3rd and 4th Respondent: Mrs K.N. Mundia, Senior State Advocate and Ms. D. Mwewa, Assistant Senior State Advocate from the Attorney General's Chambers.

For the 2nd Respondent: Mr. S. Mulengeshi of Messrs Mulengeshi & Company.

JUDGMENT

Munalula JC, delivered the Judgment of the Court.

Cases referred to:

1. Collence Mulemena v Ben Kampelo Appeal No. 48/2011 SCZ/8/181/2010
2. Ben Kampelo, suing as Chief Matebo v Collins Mulemena 2007/HN/45
3. Ted Savaya Muwowo alias Chief Dangolipya Muyombe v Abraham Muwowo alias Temwani Winston Muwowo (suing in his capacity as Chairman of the Uyombe Royal Establishment Committee) SCZ/8/50/2014
4. Bank of Zambia v Jonas Tembo and Others (2002) Z.R. 103
5. The Premier of the Eastern Cape and Others v Simon Hebe and Others Case No. 14/2014 (High Court)
6. Mutambanda Kapika v Minister of Urban and Rural Development and Others HC-MD-CIV-MOT-REV-2016/00331

Legislation referred to:

The Constitution of Zambia, Chapter 1 of the Laws of Zambia
 The Constitution of Zambia Amendment Act No. 2 of 2016
 The Chiefs Act, Chapter 287 of the Laws of Zambia
 Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia

Works referred to:

Frank. H. Melland: In Witch-Bound Africa: An Account of the Primitive Kaonde Tribe and their Beliefs 1923, 1967 edition.
 Edina Lungu: Senior Chief Mukumbi Ibaloli XV: A Biography of Beston Kabanya Mulota Mukomo Muluka of Solwezi West, 1935-2015.
 Black's Law Dictionary (1968) Revised 4th Ed, St. Paul Minn. West Publishing Co.

The Petitioners, Bernard Shajilwa (1st Petitioner), Dickson Bornface Mutamfu (2nd Petitioner), Goodson Kabulayi (3rd Petitioner), Doris Kafumukache (4th Petitioner) and Lawrence Mbomena (5th Petitioner) all of Matebo Village, Chief Matebo, Kalumbila District in North Western Province of Zambia, in an action commenced by Petition filed on 26th February 2018, challenge the recognition and placement on the Government payroll of Evans Nyeleti, in his capacity as the reigning Chief Matebo of the Kaonde people of Matebo Chiefdom in Kalumbila District of the North-Western Province of Zambia.

The Petition which is brought against the Attorney General as 1st Respondent, Evans Nyeleti as 2nd Respondent, Michael B. Pwete in his capacity as Permanent Secretary – Ministry of Chiefs and Traditional Affairs as 3rd Respondent and Ephraim M. Mateyo in his capacity as Provincial Permanent Secretary North-Western Province as 4th Respondent, avers that the 2nd Respondent in collusion with the 3rd and 4th Respondents declared himself Chief Matebo without following any customs, traditions and culture applicable to the Kaonde people of Matebo Chiefdom.

The Petitioners allege that by virtue of two meetings, one on 10th April, 2016 and another on 25th May, 2016 the Kaumba family acting in exclusion of the Matebo royal families resolved to install a person from Kiboko village as Chief Matebo and that Kapemba Bictin Jifunka purporting to act as Chairperson of the Matebo Royal Establishment wrote to the Ministry of Chiefs and Traditional Affairs advising that the installation would take place from 31st July, 2016 to 1st August, 2016. That as the selection and installation by the Kaumba family of the 2nd Respondent as Chief Matebo excluded all members of the Matebo royal families no installation took place on 1st August, 2016, or at all, and no person has been installed in accordance with the customs, culture and traditions of the Kaonde people. Further, that the 2nd Respondent was

never selected by the Royal Electoral College or at all for installation as Chief Matebo as he is not a member of the Matebo royal family.

They further allege that despite his never being installed or recognised by the Matebo Royal Establishment, the 2nd Respondent was reinstated on the Government payroll on the basis of a letter written by Maggubwi and Associates and an internal memorandum from the Chairperson of the House of Chiefs, both of whom have no role in the selection and installation of a person as Chief Matebo. That the Respondents' actions contravene Articles 165 to 167 of the Constitution of Zambia Act No.2 of 2016 (henceforth "the Constitution as amended") and violates the rights, freedoms and privileges of the Matebo Chiefdom. And that in fact the succession disputes in Matebo chiefdom have continued to date in spite of several interventions.

The Petitioners seek the following declarations:

- a. That the recognition by Government and the placing on the payroll of the 2nd Respondent as Chief Matebo is unconstitutional, null and void.
- b. That the installation of any person as Chief Matebo be held in accordance with the provisions of Article 165 of the Constitution of Zambia (Amendment) Act No. 2 of 2016.
- c. That no person shall carry himself as Chief Matebo pending determination of the matter.

The Petitioners also want each party to bear their own costs and any other relief the Court may deem fit.

The brief background to this Petition begins with the decision of the Supreme Court in case number SCZ/8/181/2010 between **Collence Mulemena v Ben Kampelo**¹ delivered on 1st April, 2016, in which the Supreme Court upheld the High Court Judgment and ruled that Ben Kampelo (from the Kaumba royal family) was the rightful Chief Matebo of the Kaonde people of Matebo Chiefdom. Ben Kampelo being already deceased at the time that the Supreme Court judgment was delivered, there followed a post judgment process to select and install a new Chief Matebo in which the 2nd Respondent was selected and installed as the new Chief Matebo on 1st August, 2016.

The Petitioners deposed in their joint affidavit in support of the Petition, that they come from and represent the Matebo Royal Establishment constituted by the Shajilwa, Mwandama, Kishiki, Kikata and Kalembelembe royal families and seek to protect the Matebo Chieftainship from a Government imposed chief. That as Ben Kampelo, the person whom the 2nd Respondent sought to succeed, died before the Supreme Court judgment which declared him Chief Matebo was handed down, he never ascended to the throne and was a commoner when he died. Hence the 2nd Respondent could not succeed Ben Kampelo as

Chief Matebo. Further, that this state of affairs was made known to the Ministry of Chiefs and Traditional Affairs through an undated letter authored by the 5th Petitioner marked BS/4 seeking the withdrawal of the 2nd Respondent's recognition.

The Petitioners also deposed that Minutes, marked BS/5 show that the Kaumba family, at a meeting attended by their family members from Kiboko village and held on 10th April, 2016 resolved that the next Chief Matebo would come from Kiboko village. That as per Minutes marked BS/7, dated 25th May, 2016 another meeting on the installation of Chief Matebo was held at Kalende Primary School. That as per exhibit marked BS/6, on 29th June, 2016 Mr Kapemba Bictin Jifunka purporting to be Chairperson of the Matebo Royal Establishment wrote to the Ministry of Chiefs and Traditional Affairs advising that the installation of Chief Matebo would take place from 31st July, 2016 to 1st August, 2016.

In support of the allegation that the 2nd Respondent was wrongly recognised as Chief Matebo, the Petitioners deposed that by virtue of a letter dated 24th November, 2016, marked BS/10, authored by the 4th Respondent and addressed to the 2nd Respondent, the former advised the latter to stop carrying himself as Chief Matebo. That the Chiefs' Council for North Western Province met from 25th to 26th April, 2017 and expressed concern about the Matebo Royal Establishment. That

following that resolution, the Ministry of Chiefs and Traditional Affairs, on 4th May, 2017 and as per exhibit BS/8 wrote a letter advising that the issue of the Matebo Royal Establishment ought to be resolved in accordance with the customs and traditions of the Matebo Royal Establishment. That to date no proper selection process of a new Chief Matebo in accordance with Kaonde customs, culture and traditions has taken place. However, through correspondence exchanged between the 3rd and 4th Respondents in November 2017 (marked BS/1 and BS/2), the two officers reinstated the 2nd Respondent on the payroll to start receiving a Government subsidy when he had never been chosen or installed as Chief Matebo by the Royal Electoral College made up of the five royal families. That on 22nd December, 2017 in a letter marked BS/9, the Petitioners' advocates wrote to the Ministry of Chiefs and Traditional Affairs to withdraw the 2nd Respondent's recognition and placement on the payroll.

In their joint Reply to the 1st, 3rd and 4th Respondents, the Petitioners maintained that the letter of 16th July, 2016 was addressed to the 2nd Respondent and not to Collence Mulemena. Further, that both the Minutes and letters sent to the Ministry of Chiefs and Traditional Affairs indicate that the Matebo Chiefdom succession wrangles were never settled and the Ministry was therefore wrong to start paying the subsidy. That payment of subsidies is made to one who is recognised and it was

clear from the letters written to the 1st Respondent that there were objections to the selection and installation of the 2nd Respondent. That there were constitutional violations and interference by the 3rd and 4th Respondents and the purported installation of the 2nd Respondent was done in breach of the Kaonde customs, traditions and culture and was therefore null and void.

In the Affidavit in Reply to the 1st, 3rd and 4th Respondents' Answer sworn by the 1st Petitioner, Bernard Shajilwa, it was deposed that Government officials should attend an installation at the invitation of a royal establishment so as to give an independent report to the Government. That in this case the Ministry of Chiefs and Traditional Affairs had simply relied on information from parties that wrongly installed the 2nd Respondent specifically the alleged Chairman Mr Kapemba Bictin Jifunka who had no authority to install the Matebo Chief. That there was evidence in the correspondence to the said Ministry that the Matebo Chiefdom succession wrangles were ongoing and it should not have proceeded to put the 2nd Respondent on the payroll when all the five royal families did not recognise him.

The Affidavit in Reply to the 2nd Respondent's Answer was also sworn by the 1st Petitioner, Bernard Shajilwa who deposed that Government officials are witnesses to an installation and therefore must

attend the proceedings. That the 2nd Respondent's installation was not done in accordance with the customs and traditions of the Kaonde people of Matebo Chiefdom thus he did not qualify to be enthroned. The 1st Petitioner further deposed that the Kaumba family is neither a royal family nor a member of the Matebo Royal Establishment and therefore should not have held and led the meetings of 10th April, 2016 and 25th May 2016 nor selected the 2nd Respondent who is a commoner. That the Kaumba family are commoners thus have no royal palace or graveyard (*Kabungo*).

The 1st Petitioner also deposed that the Supreme Court decision did not acknowledge the Kaumbas as a Royal family nor pave way to sneak in the 2nd Respondent as Chief Matebo when he is not the rightful heir to the throne. That the Kaumbas come from Lamba land and have no claim to the Matebo throne. As such, installation of a Kaumba family member on the throne is taboo and against the Kaonde customs and traditions. That the Matebo Royal Electoral College did not consent to the installation and the Respondents have usurped the said College's powers to choose their own person. Finally, that Mr Jifunka Bictin Kapemba is not the Chairperson of the Matebo Royal Establishment, the position being held by Mr Bicklon Jioma as is evident from the memorandum of understanding marked BS/1. That Chief Matebo is installed by Senior Chief Mujimanzovu or Chief Mukumbi as Chairperson of the invited chiefs.

Hence their absence would make an installation null and void. That this was the case with Evans Nyeleti's installation on 1st August, 2016.

The Petitioners filed ten witness statements however only five of the witnesses took the stand. All five testified on oath.

PW1 was Gideon Kajoba, the reigning Senior Chief Mujimanzovu, who testified that he together with Senior Chief Mukumbi are always invited to the installation ceremony. That the installation cannot proceed in the absence of one of them. PW1's narration of the other key elements of the installation process may be summed up as follows: First, the installing chief must verify the family tree of the incoming chief or *nswanyi*. Second, Government officials must be in attendance and record minutes for the Government's information. Third, instruments of power which are held by the *mumbelunga* upon the death of a chief are handed over to the new chief during the installation. Fourth, the installation takes place one year after the death of the previous chief. Fifth, the *nswanyi* must be selected by the Royal Electoral College made up of five Royal families. Sixth, the *nswanyi* is captured on the eve of the installation by his traditional cousin, and kept overnight in a hut called a *kambolo* or *kasamvu*. Seventh, the installation takes place in front of the invited chiefs and other persons; the *nswanyi* is taken out of the *kasamvu* to take the stool previously occupied by the *mumbelunga* and receive from the

mumbelunga the instruments of power to be inherited which include a gun, bow and arrow, fly whisk and bangle or *lukano* placed around the *nswanyi's* wrist by the *mumbelunga*. Eighth, the queen mother applies white powder on the *nswanyi* and he is crowned by the Chairman of the Chiefs who also pronounces him Chief. Ninth, a *nyundo* or *misense* is hammered over the newly installed Chief's head before he is taken into the palace where he serves the other chiefs with a traditional drink called *katomeno*.

PW1 testified *viva voce* that he did not attend the installation of the 2nd Respondent, and was shocked by news of it as it did not follow the required process. Further, that the 2nd Respondent could not succeed someone who had died without ascending to the throne, nor could he be installed by a Lamba chief. In cross-examination PW1 maintained that the 2nd Respondent's installation was defective because it took place in PW1's absence, outside the Matebo palace. However, he conceded that as he was not present at the installation, he did not know if all the procedures were complied with.

PW2 was Benson Kashita Mushitala the reigning Senior Chief Kasempa who testified that Senior Chiefs Mujimanzovu and Mukumbi as well as himself, are always invited to the installation of new Kaonde Chiefs because their absence would render the installation null and void. That in

the absence of Chief Mujimanzovu and Chief Mukumbi he does the installing of Chief Matebo. His testimony as to the procedure followed at the installation matched that of PW1. Like PW1, PW2 testified that he knew of the installation of the 2nd Respondent in April 2017 through a letter circulated by the 2nd Respondent as he and the other royal families were neither informed nor invited to attend when the installation was taking place. That the installation was defective, null and void and he did not recognise the 2nd Respondent as Chief Matebo. In cross-examination he conceded that the chairman of the installation is appointed at the ceremony. That as he did not attend the installation he could not speak to whether the procedure he had outlined was followed.

PW3 was Godson Kabulayi of Kishiki village in Matebo Chiefdom. He testified that he was the secretary of the Matebo Royal Establishment and a member of the Electoral College of Matebo Chiefdom. He named the five royal families of Matebo Chiefdom as Shajilwa, Mwandama, Kishiki, Kikata and Kalembelembe. Further, that the families must come together at the palace to form the Electoral College and select someone from the five families to be installed as Chief Matebo. That in the 2nd Respondent's case the five families did not convene the Electoral College. PW3 denied having worked with Jifunka Bictin Kapemba in the Matebo Royal Establishment, saying the latter had never been Chairperson of the

Establishment. He named Nelson Kanyembo and Bicklon Jioma as current and previous Chairperson respectively.

PW3 testified that he found out about the installation of the 2nd Respondent in November 2016 and found it shocking as the 2nd Respondent was not a member of the five royal families making up the Matebo royal clan. That the said installation was based on false minutes without the consent of the Royal families. That the installation was taboo and done too soon after Ben Kampelo died in November 2015. That the 2nd Respondent was chosen solely by the Kiboko family which was not tenable. That the family tree presented in the 2nd Respondent's bundle of documents was a lie and it did not relate to the chieftaincy.

PW3 further testified that after the Provincial Council of Chiefs meeting in April 2017, he and other members of the royal families, notified the Permanent Secretary North-Western Province, of their objections to the 2nd Respondent's installation and the said Permanent Secretary reassured them that instructions for the withdrawal of the 2nd Respondent's recognition and payment of subsidies had been issued. In May 2017 they were called to his office where he told them he had been authorised to do the installation and they were to go back to the chiefdom and select a name for him to present to the Ministry of Chiefs and Traditional Affairs. That this did not sit well with them and the instruction

was not followed. Then in November 2017 he heard that the 2nd Respondent had been reinstated on the payroll when there was an ongoing succession dispute.

In his oral testimony, PW3 also outlined the procedure for installing a new Chief. The account was similar to the accounts of PW1 and PW2. In cross-examination PW3 testified that the Kaumbas are not part of the Matebo royal families and originate from the Lamba people. However he conceded that the Supreme Court decision had settled the Kaumbas status and that a Council document identified a Kaumba as the 5th Matebo. That Ben Kampelo who was from the Kaumba family of Kiboko village was found to be the rightful Chief Matebo. That Collence Mulemena who lost the case in the Supreme Court was PW3's brother and that he still lived at the royal palace in Kichile and had held on to the instruments of power from the time he purportedly succeeded his elder brother Jacob Ilunga. Nevertheless PW3 maintained that although Collence Mulemena lost the case in the Supreme Court he had not been de-Gazetted. With regard to the 2nd Respondent's installation, he conceded that as he did not attend the selection meetings nor the installation he could not say whether the right procedure was followed.

PW4, Dickson Bornface Mutamfu, testified that he was the Chairperson of the Electoral College of the Matebo royal families, at all

material times and said it was his role to invite Government officials. He gave a similar account of the key steps in selecting and installing a new chief as the other Petitioners' witnesses. He too, maintained that there are only five royal families who constitute the Electoral College and that they do not include the Kaumba family. He testified that the Mwandama family which he represents did not attend any selection meeting and that the Electoral College was never convened. He further testified that the instruments of power had at no time been removed from the palace. He attested to having attended two installations: the first being the one for Jacob Ilunga whom he said was installed by Chief Mukumbi.

PW4 further testified that no one family can constitute the Electoral College. That Jifunka Bictin Kapemba was an ordinary illiterate villager and not Chairperson of the Matebo Royal Establishment. PW4 named the chairperson as Nelson Kanyembo. That Jifunka's advanced age and illiteracy raised suspicion about the letters he allegedly authored. That the Chairperson of the Matebo Royal Establishment has no role to play in the installation process hence in the absence of either Chief Mujimanzovu or Chief Mukumbi as well as Government officials the installation was a nullity. PW4 testified in conclusion that the mourning period for Ben Kampelo was inadequate; the selection was not done by the Electoral College made up of the five royal families; and no one from the

Mwandama royal family attended the said installation despite the Minutes saying that all the royal families were present.

Under cross- examination, he testified that he was not a member of the Electoral College when Jacob Ilunga was installed. He could not remember when the installation took place or when he became a member of the Electoral College. He contradicted himself when cross-examined about the membership of the Electoral College. He also conceded that he did not attend the selection meeting or installation of the 2nd Respondent and did not know what happened at either event.

PW5 was Doris Kafumukache, who testified that she comes from the Kikata Royal family, is Queen mother of the Matebo Chiefdom and is a member of the Matebo Electoral College. PW5 testified that there are ten people in the Electoral College which is chaired not by Bictin Jifunka Kapemba but by PW4. Her account of the make- up of the Matebo royal families and how a new chief is selected and installed was similar to that of the other Petitioners' witnesses. She testified that the Kikata family was not invited to the selection and installation of the 2nd Respondent. That the Matebo Royal Establishment would not have supported the 2nd Respondent as he is not a member of any royal family. Further, that no Government officials attended the event.

PW5 testified that following the purported installation of the 2nd Respondent, the royal families as the Matebo Electoral College approached the office of Provincial Chiefs and Traditional Affairs and were assured that the installation was a nullity. However, the 2nd Respondent was subsequently placed on the payroll. That after the meeting of the Provincial Council of Chiefs from 25th to 26th April 2017 there was a resolution that he should be removed from the payroll and they were assured by the Ministry that it would be done. That in May 2017, the Royal families were summoned by the 4th Respondent who instructed them to select a new candidate of their choice as his office had been given power to install Chief Matebo. That this was contrary to their customs and traditions. The royal families did not sit as instructed and in November, 2017 they learnt that the 2nd Respondent had been re-instated on the Government payroll. PW5 also testified that the instruments of power which she described in detail were still at the Chief's palace and that the 2nd Respondent was using fake instruments.

In cross-examination by Ms Mwewa, PW5 disputed that the Ministry received information from the Matebo Royal Establishment as the correspondence in issue did not originate from the palace. She denied knowing the Kaumba family or the person who was selected as Chief Matebo and maintained that there are no wrangles within the five royal

families. She conceded that the Government is only a witness at the installation and has no power to change the selection.

In cross-examination by Mr Mulengeshi, PW5 said she had been a member of the Electoral College since 1997. She denied that the selection and installation of the 2nd Respondent was attended by other royal families with the exception of the Kikata family. She admitted that the chieftaincy rotates amongst the Matebo Royal families. She also admitted that Collence Mulemena was her uncle and that the Court found that he was not the rightful chief; that she did not know why he still had the instruments of power. Further, that as she did not take part in the selection she could not testify to what was discussed or concluded. She all the same maintained that the procedure she had laid out was not followed.

In re-examination, PW5 reiterated that the 2nd Respondent's installation was defective because it did not take place at the palace.

This marked the close of the Petitioners' case.

The 1st, 3rd and 4th Respondents filed an Answer to the Petition and a supporting Affidavit on 3rd April, 2018. They did not dispute the claim that the selection and installation of a chief is the responsibility of the respective royal establishment. That in this case, the Ministry of Chiefs and Traditional Affairs was invited to attend the selection and when they

did not do so, the selection went ahead as shown by the Minutes of the Matebo Royal Establishment meeting held on 1st June, 2016. That subsequently Mr Kapemba Bictin Jifunka wrote to the Ministry of Chiefs and Traditional Affairs on 29th June, 2016 and on 8th July, 2016 advising that the installation would take place on 1st August, 2016. That the Ministry did not attend the installation, having given prior notification on 28th July, 2016 and that the Ministry later received a letter informing them of the installation of the new Chief Matebo.

The 1st, 3rd and 4th Respondents further averred in the Answer that by letters dated 14th March, 2017, 3rd May, 2017 and 24th May, 2017 it was brought to the attention of the Ministry of Chiefs and Traditional Affairs that selection and installation of a new Chief Matebo had taken place and that this notification overrode the letter of 14th July, 2016 as there was neither letter nor court order after the said installation to show an objection to the selection or installation process. That it was on the basis of the said letters and the Minutes of the selection meeting and the installation together with the lack of a legal impediment against the selection and installation that the Ministry of Chiefs and Traditional Affairs proceeded and commenced payment of subsidies in line with its statutory obligations. That payment of a subsidy to a chief is not tied to their recognition but to their selection and installation, upon notification of which a subsidy must

be paid. Hence there was no unconstitutional imposition of the 2nd Respondent by the 3rd and 4th Respondents. It was the 1st, 3rd and 4th Respondents' position that the letter marked BS/10 was addressed to Mr Collence Mulemena and not to the 2nd Respondent, and that the letter directed him to stop holding himself out as Chief Matebo following the decision of the Supreme Court.

The supporting Affidavit in Opposition filed by the 1st, 3rd and 4th Respondents was a repetition of their Answer. The 1st, 3rd and 4th Respondents' sole witness was RW1, one Robert Kasezya, Assistant Director under the Ministry of Chiefs and Traditional Affairs. It was his evidence that there was no legal impediment against the selection and installation of the 2nd Respondent. That this was the basis for the reinstatement of the 2nd Respondent on the payroll.

RW1 further testified that the Ministry of Chiefs and Traditional Affairs was invited to attend the 2nd Respondent's selection and installation by the Matebo Royal Establishment, but did not do so. That there is a difference between the procedure for recognition by gazetting applicable in the pre-2016 constitutional dispensation and the current constitutional arrangement as previously, the Republican President would upon notification by the royal establishment sign a statutory instrument gazetting the new chief, whereas subsidies are now payable upon receipt

of the Minutes of the installation. That on the basis of all the documentation received from the Matebo Royal Establishment both before and after the installation the Ministry proceeded to reinstate the 2nd respondent on the Government payroll to receive subsidies.

In cross-examination by Mr Katolo, RW1 testified that the Ministry of Chiefs and Traditional Affairs relied on the letters and Minutes sent to them by the Matebo Royal Establishment. That there was no verification of the source of the correspondence. He conceded that the Ministry of Chiefs and Traditional Affairs had authored a letter dated 4th May, 2017 advising that the selection of Chief Matebo should be done in accordance with the traditions and customs of the Kaonde people of Matebo Chiefdom despite the fact that the 2nd Respondent was already installed as chief Matebo.

RW1 also said it could be true that the Ministry rendered this advice because they did not believe in the validity of the first installation. That there was no correspondence to the effect that a selection process took place after 4th May, 2017 in accordance with the customs and traditions of the Matebo chiefdom. That it was correct to say that they as a Ministry had prematurely put the 2nd Respondent on the payroll and that they had the right to insist that the selection process should take place. That in the

light of the said letter he did not maintain that the 2nd Respondent was the properly installed Chief Matebo.

This was the end of the 1st, 3rd and 4th Respondents' case.

The 2nd Respondent filed his Affidavit in Opposition to the Petition on 19th March, 2018. He agreed with the Petitioners that the installation of any person as Chief Matebo can only be done in accordance with the traditions, culture and customs applicable to the Kaonde people of Chief Matebo. That permanent secretaries have no role to play in the installation of a chief as chieftaincy is by installation not by declaration. He deposed that he was installed by the *Bitumbamfumu* of the Matebo Royal Establishment in accordance with the customs and traditions of the *Mbuzhi* clan of the Kaonde people of Matebo Chiefdom. That whilst the meeting of 10th April, 2016 was specifically for the Kaumba family to brief them on the Supreme Court judgment and find a way forward for the Chiefdom, the meeting of 25th May, 2016 was not for the Kaumba family but was for *bitumbamfumu*, headmen, group leaders and others so that the Chairperson of the Matebo Royal Establishment could brief them on the said judgment and on the installation of the new chief. That on 1st August, 2016 he was installed as Chief Matebo succeeding the late Chief Matebo Ben Kampelo at a ceremony witnessed by members of the royal families who included Kalembelembe, Mwandama, Shajilwa, Kishiki,

Kaumba, the Lamba chief Mulonga, sub-chief Shilenda and State police and was coordinated under the Chairmanship of Jifunka Bictin Kapemba, the person who conducted the installations of the late Chief Matebo Ilunga and the late Chief Matebo Ben Kampelo. That only the Kikata Royal family boycotted the event.

The 2nd Respondent deposed further that the Matebo Royal Establishment did not receive a letter from the North-Western Provincial Administration advising the Establishment to halt the installation; and even if there was such a letter, the Permanent Secretary had no authority to stop or nullify an installation in any chiefdom. Furthermore, that the succession disputes in Matebo Chiefdom were resolved by the High Court and Supreme Court decisions and the other Kaonde Royal Highnesses were biased towards the Kikata royal family as evidenced by their being witnesses in favour of Collence Mulemena in the said proceedings.

The 2nd Respondent deposed in conclusion that the Petitioners themselves had acknowledged in their pleadings that the Supreme Court declared Ben Kampelo the rightful Chief Matebo. That he himself was installed by the same Electoral College that installed Ben Kampelo as Chief Matebo. That his membership of the Kaumba Royal family is evidenced by the same family tree drawings presented to the High Court in the case of **Ben Kampelo suing as Chief Matebo v Collence**

Mulemena.² That the 3rd and 4th Respondents were right to introduce the new Chief Matebo Evans Nyeleti to the payroll as he was installed by the Matebo Royal Establishment that comprised representatives from all six royal families.

The 2nd Respondent filed eighteen witness statements; ten witnesses who included the 2nd Respondent took the stand and testified on oath as RW2 to RW11. RW2 was John Ndumba, a member of the Kishiki Royal family. He testified that there are six royal families in the Matebo Royal Establishment namely, Shajilwa, Mwandama, Kalembelembe, Kaumba, Kikata and Kishiki and that the 2nd Petitioner is his brother from the same royal family. That the Kishiki family participated in the selection and installation of the 2nd Respondent and accepted his selection because he comes from the Kaumba royal family that Ben Kampelo also came from and also because the chieftainship rotates amongst the royal families. He testified that Kishiki was the youngest brother of Matebo Kaumba who was the 5th Chief Matebo. He testified that all the traditions relating to selection and installation were followed and that the instruments of power including the bangle, *mphande*, fly whisk and *kaseso* were given to the new Chief or *nswanyi*.

In cross-examination by Mr Katolo, RW2 testified that he only attended the installation of Ben Kampelo but corrected himself and said

he also attended the installation of the 2nd Respondent. He testified that Bictin Jifunka was the Chairperson of the Matebo Royal Establishment. When cross-examined by Ms Tembo, he testified that he attended the meetings in Lubelenga village to select the new chief. He denied that the process was exclusive or that he did not have authority to represent the Kishiki family in the proceedings. However, he conceded that he did not attend the installation of the 2nd Respondent as he does not live in Matebo.

RW 3 was Koiladi Pashiwelo. He testified that he is a cousin of the 2nd Petitioner and a member of the Mwandama royal family whom he represents on the Matebo Royal Establishment. However that he is not a member of the Electoral College. That there are six royal families all of whom were represented in the proceedings except for the Kikata family. He testified that he participated in the selection and installation of the 2nd Respondent. That the 2nd Respondent was rightly installed and tradition followed. That the instruments of power were given to the 2nd Respondent.

In cross-examination by Mr. Katolo however, he could not name the *mumbelunga* or the queen mother who passed on the instruments of power. He could not remember the exact day of installation in August 2016. He said the instruments of power given to the 2nd Respondent included a *Kaseso* and that they came from the late Jacob Ilunga and were kept at the palace where he died by a person he did not know. He

said the queen mother whose name he could not recall, had died some time back. That the *Katomeno* was shared with the Chiefs present at the installation. In re-examination he said that the *Katomeno* was shared with the Chief who unveiled the new chief.

RW4 was Wellington Nyangi the headman of Kakoshi village who testified that there were six royal families as stated by RW2 and RW3. He described the selection and installation process of the 2nd Respondent and concluded that all the required steps were followed. He said that installation is done by the Matebo Royal Establishment and not by the other chiefs as they are mere witnesses. That the absence of Senior Chief Mujimanzovu and Senior Chief Mukumbi cannot stop the installation. That the only family which was absent was the Kikata family. Further, that the 2nd Respondent was given a *mphande*, a bangle, a fly whisk and a *kibanga*. He recanted the reference to a *kaseso* in his witness statement. He also testified that the new chief came from the Kaumba family because Ben Kampelo, who was from the same family, died before ascending to the throne. In cross-examination by Mr Katolo, RW4 maintained that a *Kaseso* is not given to the new chief. He agreed with Mr Katolo that it should have been a *kibanga* and not a *kaseso* and anyone who says a *kaseso* is telling lies and does not know the Kaonde tradition. He vehemently denied mentioning a *kaseso* in his statement and that if the

"... court investigates well they will find who made that statement." He testified that the instruments of power are kept by the queen mother who hands them over to the new chief during the installation ceremony. That the 2nd Respondent was installed in August 2016. He testified further that Collence Mulemena lives at the palace at Kichile but that he is not the Chief.

RW5 was Kyankwankwa Leonard a senior induna of Kayamba village in Chief Matebo and a member of the Royal Establishment and Electoral College. He testified that he was a *bitumbamfumu* (adviser). That he was personally involved in the installation of Chief Matebo Ben Kampelo and supported the installation of the 2nd Respondent. He testified that there are six royal families including the Kaumbas and that the throne was supposed to rotate amongst all the families. Further, that the Kikata family did not participate in the installation despite being invited by the 2nd Respondent. That the absence of one family cannot nullify the selection of a new chief. He referred the Court to the video at page 148 of the 2nd Respondent's bundle of documents to show that the Kikata family were not happy with the decision of the Supreme Court. His description of what transpired during the selection and installation of the 2nd Respondent closely tallied with that of RW4. He denied that there were ten indunas as stated by PW5.

RW6 was Thomas Mutondo also known as bitumbamfumu Shamaoma. His testimony confirmed that of PW 5 on the number of indunas and their role. He testified that Ben Kampelo got his instruments of power as successor to Kaumba and that the instruments were passed on to the 2nd Respondent. In cross-examination, he stated that Ben Kampelo was recognized and gazetted and that there was no installation of Collence Mulemena.

RW7 was Peter Kashiki who testified that he was a subject of Matebo Chiefdom belonging to the *bená nge* clan, who are the traditional cousins of the *bená mbuzhi* clan to which the 2nd Respondent belongs. His testimony was confined to what occurred at the installation of the 2nd Respondent. That he was tasked with "catching" the new chief on 31st July, 2016; which he did and guarded him in the Kasamvu overnight. That the presence in the Kasamvu overnight of several people, none of whom were chiefs, did not offend tradition. That Chief Mulonga, the only chief to witness the installation and who represented the other chiefs, arrived the following day on 1st August, 2016.

RW8 was Redson Kolala of Mukambo village in Matebo chiefdom and his task at the installation was to fire a gun after the new chief was revealed, which he did. He testified that the name of the new chief was announced by Bictin Jifunka as the Chairperson of the Matebo Royal

Establishment and that RW7 was the one that captured the new chief. In cross-examination by Mr. Katolo, RW8 said he was a member of the Kaumba Royal family. He testified that the instruments of power were given to the 2nd Respondent by Kitumbamfumu Kayamba.

RW9 was Richard Mulemena also known as ex-chief Shilenda of Matebo chiefdom. His testimony confirmed the evidence of RW4, that chiefs Mujimanzovu and Mukumbi do not install Chief Matebo. Further, that all the chiefs were invited to the installation but, other than Chief Mulonga, did not attend. In cross-examination, he conceded that he had no proof that the chiefs were invited and that his testimony that other royal families attended the installation was something that he was told about. RW9 testified that there are two sets of the instruments of power. In re-examination he said he did not witness the handover of the instruments of power as he had gone to answer the call of nature.

RW10 was Harrison Nyambi, also a member of the Kaumba family from Shitonyi village in Matebo chiefdom. He testified that succeeding to the throne follows the matrilineal line. He said he had followed the events leading to the installation of the 2nd Respondent. That the Kaumba family is part of the royal families and that only the Kikata family stayed away maliciously from the installation process. He denied that chiefs Mujimanzovu and Kasempa are the ones to install chief Matebo as they are

mere witnesses and that their testimony was meant to serve their own interests. In cross-examination by Mr Katolo, he conceded that he was happy that the Kaumba family had ascended to the throne. He maintained that Ben Kampelo is buried in the Royal graveyard at Kiboko village and that chiefs need not be buried at the same anthill. Further, that it was the Matebo Royal Establishment made up of members of the royal families that made the selection through the *Kavoto* or Electoral College. He conceded that he was not a member of the Electoral College, and had not attended their meeting nor could he tell when they had met or who was present at the meeting. He however maintained that the Kikata family was invited but did not attend the installation ceremony. That Chief Mulonga attended the installation, represented the other chiefs and shared in the *Katomeno*. RW10 testified that he attended the installation and that genuine instruments of power were given to the 2nd Respondent. He said the instruments of power were handed over by *Nswana* Kaumba and that the instruments from Jacob Ilunga passed to Ben Kampelo and did not include a *Kaseso*, which he said is never given to the new chief.

RW11 was the 2nd Respondent, Evans Nyeleti of Matebo Palace in Kiboko village. He testified that he was a member of the Kaumba royal family through his mother. That he did not impose himself but ascended to the throne after he was selected by the Matebo Royal Establishment

working through the Electoral College. That the Matebo Royal Establishment met on 18th May, 2016 and resolved that the successor should come from Kiboko village, from the Kaumba royal family. That on 1st June, 2016 the Matebo Royal Establishment met to consider the proposed names. That on 31st July 2016 he was captured by his traditional cousin Peter Kishiki after a gun was fired. That he was then physically lifted and taken to the Kasamvu where he spent a night. That on 1st August 2016 he saw many people who came to attend his installation. Although only one chief, namely Chief Mulonga attended the installation, all the chiefs were invited. However that the chiefs' absence did not invalidate the installation as they were mere witnesses. It was his testimony that the Petitioners want to fuel disunity in the chieftdom. That Ben Kampelo was the rightful Chief Matebo as decided by the Supreme Court yet Collence Mulemena whose sister is the 4th Petitioner had to date continued to parade himself as Chief Matebo, and to hold on to the Government instruments of power. He referred to correspondence and video evidence at page 143, 145 and 138 of the Respondents' bundle of documents as evidence of Collence Mulemena's conduct.

RW11 testified that there are six royal families and referred to the family tree at pages 139 to 140 of his bundle of documents to show that he was qualified to be Chief Matebo. He stated that the required steps were

followed and he was given the instruments of power which have passed from one Chief Matebo to another for 100 years and comprise the bangle, fly whisk, *mpande* and *kaseso*. That they are passed by the *mumbelunga* from the deceased to the new Chief Matebo. In response to PW5's assertion that she did not know him, RW11 testified that he once lived in the same house with her and that she is aware of his qualifications and employment as a mining safety, health and environmental officer.

In cross-examination by Mr Katolo, RW11 testified that Ben Kampelo died before he started attending to national duties but that he was installed as Chief Matebo on 16th September, 2006. He said that he was selected by the *bitumbamfumu* and royal family and not the Electoral College. He said his *mumbelunga* was Alex but he could not give his last name. He testified that he was working in Solwezi before he became Chief Matebo and that Collence Mulemena was his uncle. That the palace of Jacob Ilunga stopped functioning when Ben Kampelo became chief. RW11 admitted writing to ZANACO to stop payments to the retainers at the Jacob Ilunga palace in 2017. He testified that when the Permanent Secretary wrote the letter at page 7 of the Record Relating to the Petition, stating that there was no chief in Matebo, he was already installed as chief. That there was only one Matebo Royal Establishment and the only set of traditional

instruments were the ones that Ben Kampelo was holding at the time of his death.

In re-examination, the 2nd Respondent testified that he was chosen by the Electoral College and his installation was witnessed by the people of Matebo Royal Establishment. This was the close of the 2nd Respondent's evidence.

The Petitioners filed written submissions. They began by averring that prior to 2016, the installed chief was recognized and gazetted by the President and this was prescribed by section 3 of the Chiefs Act, Cap 287 of the Laws of Zambia. That the 2nd Respondent through his own witnesses had admitted that Ben Kampelo never ascended to the throne as seen from the statement appearing at page 6 of the 2nd Respondent's Supplementary Record, paragraph 7. That this evidence was further corroborated by the Minutes of the meeting held by the Kaumba family at Mrs Malwa's home on 10th April, 2016, nine days after the Judgment of the Supreme Court was delivered. That the Record Relating to the Petition and the Minutes of the Royal Establishment held on 1st June, 2016 at which the 2nd Respondent was chosen, appearing at page 91 to 92 of the same record all show that Ben Kampelo was never gazetted and that it was Collence Mulemena who was recognized and gazetted as the holder of the office of Chief Matebo. That it was cardinal at the installation of the

two individuals that the one rightly installed was recognized and gazetted by the President in accordance with the Chiefs Act.

The Petitioners submitted that the recommendation by the High Court Judge in **Ben Kampelo, suing as Chief Matebo v Collins Mulemena**² to de-gazette Collence Mulemena has never been implemented and this was confirmed by the 1st, 3rd and 4th Respondents' witnesses as well as the 2nd Respondent himself. That since this recommendation was not brought to the attention of the President through the Ministry of Chiefs and Traditional Affairs, it entails that Ben Kampelo who died before the decision of the Supreme Court was delivered on 1st April, 2016 and before he was recognized as chief, died as an ordinary member of society and not a holder of the office of Chief Matebo. That the question to be answered by this Court is whether a person who never ascended to the throne can be validly succeeded by another person as Chief Matebo since any installation of any successor of Ben Kampelo when Kampelo was never gazetted was baseless. That the succession to the throne by the 2nd Respondent after the death of a commoner was contrary to Kaonde traditions, culture and customs and therefore a nullity.

Reliance was placed on the decision in the case of **Muwowo (Chief Muyombe) v Muwowo (Suing in his capacity as Chairman of the Uyombe Royal Establishment) and another**³ where the Supreme Court at pages J13 to J14 and page J25 opined that:

Succession in a chieftom is by way of established traditions and customs and not personal views or wishes of particular individuals. we wish to add that where the traditions and customs of a group of people has a process that is to be followed for the selection of a chief, that tradition and custom ought to be followed.

The Constitution as amended, specifically Article 165, providing for the **Institution of chieftaincy and traditional institutions** and Article 266, which defines the term "chief" were cited. The Petitioners argued that a chief is bestowed or installed as such according to the customs, traditions, usage or consent of the people. The consent just like the customs and traditions of the persons concerned is cardinal, failing which an installation is questionable and should be declared null and void because a person so bestowed was not bestowed in accordance with the customs and traditions of the people concerned. Further that in the face of the undisputed witness testimony, the installation of a successor as chief must be premised on the fact that there is a deceased Chief Matebo and this Chief must have been enthroned as Chief Matebo failure to which the succeeding installation was null and void.

The Petitioners submitted further that there are two activities that must precede the full installation of Chief Matebo namely, the selection process by the royal families and the installation ceremony. First on the selection process the Petitioners submitted extensively on what they perceived to be lapses. They pointed out that it is undisputed that the

selection process is conducted by the royal families known as the *benambhuzhi* who form the Electoral College. Based on the evidence tendered, they argued that according to Kaonde customs and traditions, the royal families must form an Electoral College called the *Kavoto* and each of the royal families must nominate a member of their family to it. The Electoral College votes, based on the nominated candidates. The name of the person so selected is kept a secret among the members of the Electoral College and is not revealed to anyone, not even the Matebo Royal Establishment. The date of the installation ceremony is fixed at the selection meeting by the Electoral College. The Petitioners contended that this fact was confirmed by the 2nd Respondent's own witnesses such as RW9 who so admitted under cross-examination and further that the *bitumbafumu* who are not members of the royal families do not have authority to participate in the selection process or to form part of the Royal Establishment. That persons who are not members of the royal families are not supposed to be in attendance at the selection meeting. Further that the meetings leading to the selection process were all held outside the palace as evidenced by the testimony of the 2nd Respondent himself when it was an error for anyone to have participated in the selection and installation of the 2nd Respondent away from the palace at Kichile.

The Petitioners argued that there is no evidence before the Court to show that there was an actual selection process by the royal families. The only evidence before this Court is that of Minutes from a meeting held on an unknown date but appearing as "18th Ma, 2016" (which date was confirmed by witness testimony as "18th May, 2016" and is henceforth so referred to) at pages 122 to 127 of the Supplementary Record relating to the Petition. The Minutes show that there was no actual selection by the royal families. That only three individuals spoke and consented to the selection of a member of the Kaumba family; Headman Kakoshi from Musase royal family, asking how the successor would be chosen, Mr. Koiladi Mwepu from the Mwandama royal family and Mr. Ndumba from the Kishiki royal family who seconded Mr. Mwepu that a successor of Ben Kampelo should come from the Kiboko village because he had died before ascending to the throne.

Further, that there is no evidence that consent from the other royal families, namely, Shajilwa, Kikata, Mwandama and Kalembelembembe was obtained. That there is also no indication on the record to show where those in attendance came from, making it difficult for this Court to ascertain whether there was proper representation from all the royal families given that it was not only the Kikata royal family whose consent was not sought but that of all the royal families. And further, that there is

no indication in the Minutes as to who constituted the Matebo Chiefdom indicating that it was the people of Matebo Chiefdom who were in attendance as if it was not a preserve of the royal families. That this would justify the attendance by Kapemba Bictin Jifunka who is a commoner and not from the royal blood line, at the said meeting. That even RW7, a traditional cousin and clearly not from the royal family was present at the meeting as he appears as the 37th in attendance. This means that the meeting was for the general members of the public who convened to discuss the selection of the successor.

It was contended by the Petitioners that even the secretary and chairperson of the Royal Establishment hold the same positions in the Electoral College as noted from the similarity in the signatures on all exhibited documents sent from Matebo Royal Establishment and the minutes of 18th May, 2016. That it is not in dispute that the Chairperson of Matebo Royal Establishment is not a member of any of the royal families and his presence at the meetings is alarming, raising doubts that the selection process was secretive. That there is no documentary evidence showing that indeed the Electoral College met on 1st June, 2016 to select the 2nd Respondent.

They maintained that the only Minutes available show that the Royal Establishment convened on 1st June, 2016 at Mukobo village away from

the palace at Kiboko village for the selection of a successor. That this gathering was not comprised of the same royal families that had met on 18th May, 2016 and decided to meet again on 1st June, 2016 as it was the Royal Establishment that met. That the chairperson of that meeting Mr Jifunka signed in his capacity as chairperson of the Electoral College of Matebo when in fact the title of the minutes clearly shows that it was the headmen and *kitumbafumu* that sat to select the successor. Hence there are no Minutes to prove that each of the royal families participated in the decision that a successor should come from the Kaumba family nor is there any evidence showing that the Royal Establishment consented to the selection of the 2nd Respondent as chief on 1st June, 2016.

In fact, it was argued, the only Minutes appearing at page 57 of the Record Relating to the Petition are those of the Kaumba family and at which no other royal family is on record. That there is also no evidence that there was consent that the particular applicable tradition should be done away with. Since there was a serious departure from the tradition and custom required, the subsequent installation of the 2nd Respondent that was done by the Royal Establishment made up of commoners and some royal family members was against the traditions and customs of the Kaonde people of Matebo Chiefdom.

With regard to the lapses in the installation process, it was first submitted that the only persons that go into the *kasamvu* are the successor, the traditional cousin and the chiefs that go in and out through the night to advise the successor on how to rule. That based on the evidence of RW7, this tradition was not followed as RW7 stated that the *bitumbafumu* and two others from the family were with the 2nd Respondent in the *kasamvu*. Secondly, that based on the undisputed facts, none of the chiefs were present to advise the 2nd Respondent. Instead his subordinates *bitumbafumu* Kayamba and Goodson Kafute plus members of the royal family did so contrary to the traditions and customs of the Kaonde people of Matebo Chiefdom. Moreover, that even the invitation of chiefs was selective and only Chief Mulonga of the Lamba people attended the installation ceremony. It was submitted that PW2, Chief Kasempa, never received an invitation to the installation of the 2nd Respondent.

Thirdly, that, in accordance with the traditions of the people of Matebo Chiefdom, it is cardinal that the two senior Chiefs Mujimanzovu and/or Mukumbi install Chief Matebo, who is the junior chief in their area and the absence of both means that the installation is null and void. Even the act of pronouncing a successor as chief is the preserve of the two senior chiefs PW1 and/or PW2 but it was in the case of the 2nd

Respondent done by a mere commoner - Bictin Jifunka Kapemba, the alleged chairperson of the Matebo Royal Establishment.

In this regard, the Court was asked to take judicial notice of the fact that the history of the Kaonde people of Matebo is rarely documented and that the Court may find itself in a dilemma in accepting the competing assertions of the parties about the actual customs and traditions of the people of Matebo. That the Court should seek solace in the book In Witch-Bound Africa: An Account of the Primitive Kaonde Tribe and their Beliefs 1923, 1967 edition by Frank. H. Melland specifically chapter vii pages 98 and 99 and the work of Edina Lungu in her book Senior Chief Mukumbi Ibaloli XV: A Biography of Beston Kabanya Mulota Mukomo Muluka of Solwezi West, 1935-2015 at page 47. That these texts are authoritative on the customs and traditions of the Kaonde people of Chief Matebo and answer the question of who installs Chief Matebo. The Petitioners therefore averred that the Petitioners' witnesses PW1 and PW2 are responsible for conducting the installation as confirmed by RW7.

Fourthly, the Petitioners pointed to the questions around the *mumbelunga*, or the caretaker who is usually the queen mother. That based on contradictory evidence of the 2nd Respondent's witnesses, it was clear that this was not a fact during the installation in issue as a result the Petitioners were not surprised that the 2nd Respondent had named his

mumbelunga as Mr. Alex having forgotten his last name. That the *mumbelunga* was a man. And whilst the evidence of RW9 showed that the instruments of power were handed over by the queen mother, the evidence of RW8 showed that *bitumbafumu* Kayamba did the handover. Other evidence on record from RW10 suggested that it was *nswana* Kaumba who handed over the instruments of power. That this in turn shows that either the witnesses are not entirely truthful or that there were about four *mumbelungas* who handed over the instruments of power to the 2nd Respondent.

Fifthly, the Petitioners turned to the *kaseso*, saying that giving it to the new chief as indicated by the 2nd Respondent's witnesses, is against the tradition and custom of the Kaonde people of Matebo. Further, that from undisputed evidence, it was clear that the sharing of *katomeno* with commoners and subordinates was a taboo. At the installation of the 2nd Respondent, RW2, RW4 and RW9 testified that the *katomeno* was shared amongst not only the chiefs but also the *bitumbamfumu* and other persons present, an act that defeats the whole purpose of the *katomeno*.

Sixthly, the Petitioners submitted that there is undisputed evidence that the Government instruments of power are still in the hands of Collence Mulemena as shown by the letter of 24th November, 2016 hence

the 2nd Respondent was not handed the Government instruments of power.

On the first claim, whether the act of placing the 2nd Respondent on government payroll was constitutional, the Petitioners submitted that based on the evidence of RW1, Government by its letter dated 4th May, 2017 had advised that another selection be done, but that to date it had never received any correspondence to the effect that the advice was followed. That RW1 admitted that the 2nd Respondent was prematurely and wrongly placed on the Government payroll as he had not been rightly installed as chief. That the 1st, 3rd and 4th Respondents did not dispute the evidence of PW5 about communications that were made about the succession disputes in Matebo Chiefdom to the Ministry of Chiefs and Traditional Affairs or that no consent had been given by the royal families to the installation of the 2nd Respondent.

That as a result, the 1st, 3rd and 4th Respondents had grossly interfered with the Petitioners right and freedom to select and install Chief Matebo according to their traditions and customs by initially placing the 2nd Respondent on the Government payroll and later putting him back on the payroll when they were well aware that no proper selection and installation had been done. That the fact that the Government was aware that Government instruments of power were still in the hands of Collence

Mulemena goes to support this position. Additionally, that there was no presence of Government officials at the installation of the 2nd Respondent making it an irregularity as confirmed by RW1.

The Petitioners submitted that the evidence in total shows that there was no proper installation of the 2nd Respondent and that there was a contravention of the constitutional provisions. That the Petitioners had proved that the purported installation of the 2nd Respondent was null and void as it was contrary to the Kaonde traditions and customs of Matebo Chiefdom and that the act of placing the 2nd Respondent on the payroll by the Government was unconstitutional and against the rights of the people of Matebo. The Court was urged to grant the Petitioners' relief and allow them to select and install Chief Matebo according to their customs and traditions.

In their written submissions, the 1st, 3rd and 4th Respondents, averred that based on Article 165 of the Constitution as amended, Parliament is prohibited from enacting legislation that confers on a person or authority the right to recognize and withdraw the recognition of a chief. The selection and installation of a chief is the responsibility of the Royal Establishment. Counsel submitted that the Ministry of Chiefs and Traditional Affairs received a letter from the Chairperson of the Matebo Royal Establishment, Mr. Bictin Jifunka Kapemba, on 29th June, 2016 and

another on 8th July, 2016, informing the ministry of the installation of the 2nd Respondent which was to take place on 1st August, 2016. That the Ministry was unable to attend the installation ceremony and prior information to that effect was given on 28th July, 2016 as evidenced by the correspondence between the Ministry of Chiefs and Traditional Affairs and Mr Bictin Jifunka Kapemba appearing at pages 93, 94 and 101 of the Record Relating to the Petition. That subsequently the Ministry was informed of the installation through Minutes appearing at pages 95, 97, 99 and 103 of the Record Relating to the Petition. It was further argued that Government does not play any role in the selection and installation of a chief as conceded to by PW5 in her evidence. That from the evidence of RW1, it was clear that the Government may attend installation ceremonies and in this instance, it did not. That Government presence at an installation is not mandatory as it is by mere invitation.

The 1st, 3rd and 4th Respondents submitted that based on the evidence of RW1, even though the recognizing of chiefs as provided for under section 3 of the Chiefs Act, Chapter 287 of the Laws of Zambia, is no longer followed, the requirement for the President to recognize and satisfy him or herself that a person is entitled to hold the office of chief under customary law still exists on the statute book; however the coming into effect of the Constitution as amended, has done away with it. That

there was no document presented by the Petitioners before the Court showing that the 1st Respondent had recognized the 2nd Respondent as Chief Matebo. The 1st Respondent was simply informed of the installation of the 2nd Respondent and proceeded to place him on the payroll in line with the Ministry's statutory duty. As such, there was no contravention of Article 165 of the Constitution as the 1st Respondent merely acted on the information it received. That there was no duty on the Government to verify the authenticity of the letters from the Royal Establishment, neither could they dispute a name that had been put forward as chief as such action would amount to interference.

It was argued that the receipt of the letters dated 14th March, 2017, 3rd May, 2017 and 24th May, 2017 from the Matebo Royal Establishment together with the Minutes of the installation process of the 2nd Respondent was enough evidence that the 2nd Respondent was installed chief given the fact that Government officials were not present at the event in question. Furthermore, since the letter from PW5 appearing at page 55 of the Record Relating to the Petition, was undated, this Court cannot determine whether it was written to the Ministry before or after the communication about the installation was given to the Ministry or even whether the communication was indeed received as the letter was exhibited by the Petitioners and not the 1st Respondent. In the absence

of a legal impediment such as a court order or a judgment against the selection and/or installation process, there was nothing to prevent the Ministry from acting on the information received.

Finally, it was contended that the placement of the 2nd Respondent on the payroll as Chief Matebo did not contravene the powers and privileges of the Matebo Chieftdom to install their own chief as provided under Article 165 of the Constitution as section 8 of the Chiefs Act requires such payment of government subsidies to be made to people holding such office after receipt of the necessary information as indicated by RW1. The Court was urged not to grant the reliefs sought as the Petitioners had failed to prove their claims.

The 2nd Respondent also filed written submissions in which he began by contesting the submission that the late Ben Kampelo did not ascend to the Matebo throne because he was not formally recognized. It was argued that the claim was erroneous and misleading. The 2nd Respondent relied on the definition of 'ratification' laid out in **Black's Law Dictionary (1968) Revised 4th Ed, St. Paul Minn. West Publishing Co.** at page 1436 to argue that recognition amounts to confirmation after the fact. That recognition does not confer authority but merely confirms it. That the Presidential recognition of a Chief as envisaged in section 3 (2) of the Chiefs Act is a mere confirmation that a person is entitled to hold

office under African Customary Law and does not amount to enthronement. The non-recognition of a traditional chief by the President as envisaged in the aforesaid section does not entail that the particular chief has not ascended to the throne. To hold otherwise would lead to an absurd situation quite different from what Parliament intended and enacted into law.

The 2nd Respondent argued that based on the decision of the Supreme Court in **Collence Mulemena v Ben Kampelo**¹ the recognition of the said Collence Mulemena as chief was *void ab initio* as he was not the rightful person to hold the office in question. That under section 48 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia, the Gazette merely serves as prima facie evidence and can still be challenged for any irregularity arising from the underlying facts. The purported recognition of Collence Mulemena and his gazetting by the President was thus successfully challenged in the courts of law.

On the Petitioners' submission that it is trite law that prior to 2016, the installed chief ought to be recognized and gazetted by the President as provided for under section 3 of the Chiefs Act and that this position still subsists today as the Act is still law, the 2nd Respondent averred in response, that with the coming into force of the Constitution as amended, specifically Article 165 (2) (a), section 3 of the Chiefs Act is in

contravention of the Constitutional provision as the Constitution prohibits Parliament from enacting legislation which confers on a person or authority the right to recognize or withdraw the recognition of a chief. That section 3 of the Chiefs Act is no longer good law. The recommendation therefore by the High Court Judge to the President for the de-gazetting of Collence Mulemena and the recognition of Ben Kampelo is no longer tenable at law. That by virtue of Article 165 (1), Ben Kampelo became chief posthumously when the amendment to the Constitution was effected and when the Supreme Court pronounced him as the rightful Chief Matebo.

That since the 2nd Respondent was only installed in August, 2016, the Chieftaincy had properly moved from the late Ben Kampelo to the 2nd Respondent. In short, it was submitted that after the decision of the Supreme Court in favour of the late Ben Kampelo, Collence Mulemena's chieftaincy was nullified, the requirement for de-gazetting fell away and Ben Kampelo was in fact chief all along by virtue of his traditional authority. The 2nd Respondent adopted the position enunciated in the **Muwowo**³ case and the definition of 'chief' as set out under Article 266 of the Constitution as amended to contend that the 2nd Respondent succeeded Ben Kampelo who was validly and rightfully chosen and installed, as Chief

Matebo by virtue of his birth right. That the selection and installation were confirmed by the High Court and Supreme Court.

With regard to the averment by the Petitioners that there was no actual selection process, the 2nd Respondent submitted that the right selection process is as outlined in paragraph 35 on pages 18 to 19 of the Supplementary Record Relating to the Petition. That a perusal of the Minutes of the meeting held on 18th May, 2016, show that Mr. Koiladi Mwepu from the Mwandama royal family proposed that since the late Chief Matebo died whilst the matter was still in Court, his successor was to come from the Kaumba royal family, Kiboko village. The decision was seconded by Mr. John Ndumba from the Kishiki family and all other members present agreed which shows that the royal families were involved in the selection process. The families chose to exercise their authority by resolving that the Kaumba royal family should send the names of four persons to the Matebo Electoral College for scrutiny and recommendation which was to be done on 1st June, 2016 and this was actually done on that day. That the Petitioners admitted at page 10 of their submissions that there are six and not five royal families as they had earlier claimed in their evidence and that all royal families had given their consent with the exception of the Kikata royal family. That this was confirmed by the evidence of RW2. That non-attendance by the Kikata

royal family is consistent with past behaviour as seen from the selection and installation of Ben Kampelo a fact established by the Supreme Court in the **Collence Mulemena v Ben Kampelo**¹ case.

The 2nd Respondent further argued that if any of the members of the royal families had any objections to the selection process, they would have raised them. That the claim that Mr. Jifunka influenced the selection and installation process of the 2nd Respondent was therefore unwarranted as he was merely the Chairperson of the Matebo Royal Establishment and of the *Bena Mbhuzi* clan. This is the same role that he played during the installation of the late Ben Kampelo as confirmed by the Supreme Court and the High Court. In support of this argument, he referred the Court to the Supreme Court Judgment at page 47 of the Record Relating to the Petition.

On the question of whether other chiefs were invited, the 2nd Respondent averred that there was evidence to show that Chiefs Kasempa, Ingwe, Kaponda and Mulonga were invited. That only Chief Mulonga attended. It was the 2nd Respondent's position that chiefs are invited to the installation ceremony as witnesses and their non-attendance does not invalidate the installation of Chief Matebo. He thus disputed the evidence of PW1 and PW2, adding that what is essential is that there is a chief present to witness the installation. The decision of the Supreme

Court was again referred to particularly pages 32 and 48 of the Record Relating to the Petition wherein the said Court found that confusion in the Chieftdom was introduced by Chief Mukumbi when he imposed Collence Mulemena on the people.

In relation to the work relied upon by the Petitioners and authored by Edina Lungu, the 2nd Respondent pointed to the fact that the work was only done in 2015. In his view, the work was not independent or impartial and could be linked to the ongoing Matebo chieftainship disputes. It was the 2nd Respondent's prayer that the work in question be excluded for being misleading. He further argued that the Petitioners' arguments are contradicted by the said work as the work suggests that Chief Matebo and Chief Mujimanzovu are at the same level when it was the Petitioners' argument that in fact the latter is senior to the former.

With regard to the issue of multiple *Mumbelunga*, it was contended that there was only one *Mumbelunga* present at the installation and this Court was urged to view and take judicial notice of the video of the installation of the 2nd Respondent on *You Tube* as publicized by *Muvi TV News* dated 3rd August, 2016 under the title '*Chief Matebo Report*'. That this video shows only one *Mumbelunga* handing the instruments of power to the 2nd Respondent and therefore substantially corroborates the 2nd Respondent's evidence.

In response to the argument on the authenticity of the instruments of power, it was submitted that even though it is not in dispute that the Government instruments of power were still in the possession of Collence Mulemena, the traditional instruments of power are the essential of the two for the validation of the installation of Chief Matebo. That the absence of the Government instruments of power cannot invalidate the installation process.

The 2nd Respondent adopted the position of the 1st, 3rd and 4th Respondents in addressing the question whether the Government wrongly recognized the 2nd Respondent as Chief Matebo and therefore placed him on the payroll in violation of Article 165 of the Constitution as amended.

In conclusion, the 2nd Respondent argued that the Petitioners were attempting to use this Court as a means of overturning the decision in the **Collence Mulemena**¹ case which decision went in favour of the late Ben Kampelo. That the Supreme Court and this Court rank *pari passu* and thus no appeal would lie to either one of the two against the decision of the other. That based on the decision in the case of **Bank of Zambia v Jonas Tembo and Others**⁴ it was in the public interest that there should be an end to litigation. That there was a high chance that this Petition was commenced not in the interest of the Matebo Chieftdom but that of the

Kikata family. That the 4th Petitioner has a personal and family benefit to derive from the nullification of the installation of the 2nd Respondent. He urged this Court to determine this matter in the interests of the people of Matebo Chiefdom. This marked the close of the 2nd Respondent's case.

We have seriously considered the evidence adduced by the parties and the written submissions filed together with the authorities and documents in support. We have also taken note of the **Collence Mulemena v Ben Kampelo**¹ Supreme Court decision.

The Petitioners must prove their claim on a balance of probabilities. They seek the following declarations: First that the recognition by Government and the placing on the payroll of the 2nd Respondent as Chief Matebo is unconstitutional and null and void. Secondly, that the installation of any person as Chief Matebo be held in accordance with the provisions of Article 165 of the Constitution of Zambia (Amendment) Act No.2 of 2016. Thirdly, that no person shall carry himself as Chief Matebo pending determination of the matter.

We shall first dispose of the third claim which is a plea for interim relief. As the issue was not properly pleaded nor argued in any way either before or during the hearing of the main matter, we take it that it was abandoned by the Petitioners. It follows that the first and second claims constitute the whole of the Petitioners' case.

For convenience we will address the issues raised in the said claims in the order in which they have been pleaded. First, we address the question whether the act of placing the 2nd Respondent on the payroll constituted recognising him as Chief Matebo so as to contravene the Constitution as amended.

The events that resulted in the 2nd Respondent being placed on the Government payroll are not in dispute: On 1st April, 2016, the Supreme Court of Zambia delivered a judgment upholding a High Court decision that pronounced Ben Kampelo as the rightful Chief Matebo. The said High Court decision was the result of an initial action instituted by Ben Kampelo against Collence Mulemena who was at the time of the decision the duly Gazetted Chief Matebo holding the Government instruments of power and living in the Matebo Palace at *Kichile*, a state of affairs which has continued to date. By the time the decision was handed down Ben Kampelo was deceased, having passed away in November 2015. On 1st August, 2016 the 2nd Respondent assumed the position of Chief Matebo as successor to the late Ben Kampelo. The information about the 2nd Respondent's installation as Chief was communicated to the Government through various correspondence on record and he was in due course placed on the Government payroll to receive subsidies as

Chief Matebo. And although he was on an earlier unspecified date removed from the payroll, he was reinstated in November 2017.

What is in dispute is whether, by placing the 2nd Respondent on the payroll, the Government thereby recognised the 2nd Respondent in contravention of the Constitution as amended. Related to this is the dispute over whether the 2nd Respondent was properly selected and installed as Chief Matebo by the Kaonde people of Matebo Chiefdom in compliance with their customs and traditions. As the two aspects were argued as one we find it necessary at the outset to clarify the limits of our jurisdiction.

The title and pleadings make reference to the fundamental human rights and freedoms of the Matebo people and allege a violation of the right of the Matebo Royal Establishment to install a chief in accordance with Kaonde culture, customs and traditions. We wish to point out that under Article 1 (5) read with Article 128 (1) (a), (1) (b), (2) and (3) this Court has exclusive jurisdiction only over constitutional matters. It is however precluded from adjudicating upon human rights claims enshrined in the Bill of Rights or Part III of the Constitution as amended. This Court also has no jurisdiction to determine general questions of law which are not constitutional in nature or any other matters whether civil or criminal. With this in mind, we have carefully examined the pleadings and find that

the only constitutional question before us is whether the 2nd Respondent, through the sole act of placing him on the payroll, has in fact been recognised by the Government in contravention of Article 165 of the Constitution as amended. As such, we find that the related question of whether the 2nd Respondent was properly selected and installed as Chief Matebo of the Kaonde people is not a constitutional matter and is for this reason, not properly before this Court

Before proceeding with determination of the import of placing the 2nd Respondent on the payroll, we also wish to point out that since only Article 165 of the Constitution as amended is actually pleaded and argued to the exclusion of Articles 166 and 167 of the Constitution as amended (also cited in the title) we shall confine ourselves to whether placing the 2nd Respondent on the payroll constitutes recognition and is therefore in contravention of Article 165 of the Constitution as amended.

We begin with the meaning of the term "recognition". Recognition, is not defined by the Constitution or the **Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia**. However **Black's Law Dictionary 8th Edition** defines "recognition" as *"... confirmation that an act done by another person was authorized...formal admission that a person, entity or thing has a particular status; esp. a nation's act in formally acknowledging the existence of another nation..."*

Enacting legislation to recognise or withdraw recognition of a chief is prohibited by the Constitution as amended. Article 165 provides:

165 (1) The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.

(2) Parliament shall not enact legislation which-

(a) confers on a person or authority the right to recognise or withdraw the recognition of a chief; or

(b) derogates from the honour and dignity of the institution of chieftaincy. *(emphasis added)*

Article 165 is read with Article 266 of the Constitution as amended which defines a chief as follows:

“chief” means a person bestowed as chief and who derives allegiance from the fact of birth or descent, in accordance with the customs, traditions, usage or consent of the people in a chieftom;

It is thus our considered view that the term recognition entails that some formal act mandated by law is performed by the person authorised to so perform it. That recognition of a chief under Article 165 of the Constitution as amended, in the sense in which the term is used, requires the party doing the “recognizing” to perform some formal act which serves to acknowledge or confirm the status of chief. What such formal act entails can be deduced from past practice. Article 165 repealed Article 127 of

the Constitution of Zambia (Amendment Act No. 18 of 1996) which provided as follows:

- (1) Subject to the provisions of this Constitution, the Institution of Chief shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.
- (2) In any community, where the issue of a chief has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by an Act of Parliament.

Article 127 was operationalized by the **Chiefs Act** Section 3 which provides:

(1) Subject to the provisions of this section, the President may, by statutory order, recognize any person as being, within the area in Zambia specified in the order, the holder of-

.....

(b) the office of Paramount Chief, Senior Chief, Chief or Sub-Chief.

(2) No person shall be recognized under this section as the holder of an office unless-

(a) the President is satisfied that such person is entitled to hold the office under African customary law; (*emphasis added*)

Recognition of a chief under the repealed Article 127 was premised on the designated authority accepting that one had rightly been installed in accordance with the traditions, customs and culture of the people under that chief's governance as demanded by Section 3 (2) (a) of the Chiefs

Act. That the President had a duty to satisfy himself that a person was rightfully installed. He could accept or decline. Therefore recognition was more than mere acknowledgment of the person holding the office of chief as chief but also constituted validation of a person's status as chief in accordance with Article 127 (1) of the Constitution of Zambia and section 3 (2) (a) of the Chiefs Act. It formalised the status of the new chief and paved way for interaction between the chief and the Government.

Similar laws exist in other countries in the sub-region. In the South African case of **The Premier of the Eastern Cape and Others v Simon Hebe and Others**⁵ the court stated that, "The recognition of a traditional community is effected by the Premier concerned by means of a publication of a notice in the provincial Gazette." And in the Namibian case of **Mutambanda Kapika v Minister of Urban and Rural Development and Others**⁶ the court stated that a particular community will follow their customary law in designating a person as chief after which they apply to the Minister for approval which may or may not be granted. That this is what comprises recognition of a traditional chief.

The question then is this: Can the action taken by the Government in this case, of placing the 2nd Respondent on the Government payroll be equivalent to issuing a Statutory Instrument of recognition. We wish to state from the outset that we find the 1st, 3rd and 4th Respondents'

argument that it is not, to be on point because of the evidence adduced which we have seriously considered.

The evidence we have is that selection and installation of the 2nd Respondent took place in Matebo Chiefdom. Neither the 3rd and 4th Respondents nor any officers at the Ministry of Chiefs and Traditional Affairs attended or participated in any of the selection or installation events. It is not disputed that the 3rd and 4th Respondents put the 2nd Respondent on the payroll after the fact of installation was concluded. That they did so on the basis of documentation received from persons who identified themselves as the Matebo Royal Establishment.

The Petitioners however have vehemently argued that the Government was not a simple receptacle. The Petitioners' evidence, in particular PW3, PW4 and PW5, is that the 3rd and 4th Respondents proceeded to place the 2nd Respondent on the payroll despite having full knowledge of the wrangles surrounding Matebo Chiefdom. That the Provincial Chiefs Indaba held in April, 2017 and attended by Government officials established that the 2nd Respondent was not the rightful Chief Matebo. That all this information was made available to the 3rd and 4th Respondents through an undated letter under the hand of PW5 and through visits to the same offices by some royal family members who were reassured that their concerns would be addressed.

The Petitioners further averred that in a letter dated 4th May, 2017, the Government had in fact instructed the people of Matebo Chiefdom to carry out a fresh selection despite the occupation of the office by the 2nd Respondent. That no such second selection took place. And that the 1st, 3rd and 4th Respondents did not dispute the evidence that they had received the said communication of succession wrangles in Matebo Chiefdom. That the Government however went ahead and reinstated the 2nd Respondent on the payroll contrary to assurances that the issue had been resolved in favour of the Petitioners and other interested parties.

In response, the 1st, 3rd and 4th Respondents averred that the post 2016 constitutional amendment does not permit the enactment of legislation to confer on any person the authority to recognize or withdraw the recognition of a chief. That selection and installation of the chief is the responsibility of the Matebo Royal Establishment. That their action in placing the 2nd Respondent on the payroll did not constitute recognition. Their witness RW1 testified that the Ministry of Chiefs and Traditional Affairs were invited to attend both the selection and installation processes but were unable to attend either event. That attendance at either event is not mandatory. That although the Chief's Act section 3 still provides for recognition, the requirement has been done away with by the Constitution as amended hence the Government proceeded to place the 2nd Respondent on the payroll after receiving correspondence in the form of

meeting minutes and letters from the Matebo Royal Establishment advising them of the installation. That they were shown no objection in the form of a court order to prevent the 2nd Respondent's reinstatement on the payroll hence there was no duty on the part of Government to verify the information they received. As such the 2nd Respondent's placement on the payroll fulfils a statutory obligation.

We take note that the Ministry of Chiefs and Traditional Affairs did write the letter dated 4th May, 2017 marked as exhibit BS/8 in which they committed to allow for the due process of law as well as the selection process according to the customs and traditions of the Kaonde people of Matebo Chiefdom, after becoming aware of pending litigation and the resolutions of the Chiefs Council for North-Western Province held from 25th to 26th April, 2017. This was the correct step to take under the law and was not an act of recognition or withdrawal of recognition by the Government. It merely allowed for challenges to the 2nd Respondent's selection and installation being orchestrated by interested parties to run their course and did not draw the Government into the fray.

After all due consideration it is our finding that on the evidence before us, the placement of the 2nd Respondent on the payroll does not in and of itself constitute recognition as envisaged by Article 165 of the Constitution as amended. Such an interpretation is not tenable. In our considered view, to say so would mean that from the time Article 165 came into force

it became illegal to pay the chief's subsidy or perform other purely administrative processes relating to a chief.

Therefore the 3rd and 4th Respondent's actions in placing the 2nd Respondent on the payroll were within the law and do not contravene Article 165 of the Constitution as amended. It accordingly follows that the 3rd and 4th Respondents actions cannot be said to have interfered with the autonomy of the people of Matebo to select and install their own chief.

This means that without a statutory order being issued by the Government in recognition of Chief Matebo it cannot be said in principle that the said chief has been recognised in violation of the Constitution as amended.

The Petitioners' first claim, to the extent to which it equates placement on the payroll with recognition by the Government must fail. It is dismissed.

The second claim is for a declaration that the installation of any person as Chief Matebo be held in accordance with Article 165 of the Constitution as amended. It does not establish a cause of action against the Respondents. Such a declaration is in fact superfluous given the existence of Article 165 of the Constitution as amended and our decision on the first claim.

It is equally dismissed.

Costs are for the Respondents and are to be agreed and taxed in default of agreement.

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A.M. Sitali

CONSTITUTIONAL COURT JUDGE

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M.S. Mulenga

CONSTITUTIONAL COURT JUDGE

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P. Mulonda

CONSTITUTIONAL COURT JUDGE

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Prof M.M. Munalula

CONSTITUTIONAL COURT JUDGE

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M. Musaluke

CONSTITUTIONAL COURT JUDGE