EDSON CHIGODORA
and
SAMUEL BINDU
and
EDSON CHIOTA
and
PHINEAS CHIOTA
versus
AUSTIN MURWIRA
and
THE MINISTER OF LOCAL GOVERNMENT AND PUBLIC WORKS N.O.
and
THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.
and
MASHONALAND EAST PROVINCIAL ASSEMBLY OF CHIEFS N.O.
and
NATIONAL COUNCIL OF CHIEFS N.O.
and
DISTRICT DEVELOPMENT CO-ORDINATOR, MARONDERA DISTRICT N.O.

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 23 and 28 May 2025

Opposed Application

Mr *I. Gonese*, for the applicants
Mr *B. Matongera*, for the 1st respondent
2nd to 6th respondents in default

MAMBARA J: This is an application arising from a dispute over the Chiota Chieftainship in Mashonaland East. The four applicants – being members of the Chiota chieftaincy family – seek to challenge and set aside the appointment of the first respondent, Austin Murwira, as the substantive Chief Chiota. They contend that the appointment was irregular and contrary to the customary succession practices of the Chiota community. The applicants pray for a declaratur nullifying the first respondent's appointment and for an order directing that the proper traditional selection process be undertaken afresh, under the guidance of the relevant authorities. The first respondent opposes the application.

The second – sixth respondents failed to file their papers and an application to postpone the matter to enable them to have an application for condonation for not filing their papers that

was made at the hearing of the matter was not successful. The matter was initially set to be heard on 30 April 2025. At the hearing counsel for the first respondent applied that the matter be postponed to another date because he was not feeling well. The application was granted. The Sate was, at the same time, directed to take this opportunity to file its papers. When the matter resumed the State had not filed the necessary papers and I accordingly dismissed an application to postpone the matter once more.

Background Facts

The Chiota Chieftainship traces its origins to the clan patriarch, Chivazhe, and traditionally rotates among three houses: Chakabvapasi, Tunha, and Chipitiri. The last substantive Chief Chiota, the late Frederick Mapfumo (of the Chakabvapasi house), passed away on 31 May 2013. This left the chieftaincy vacant. In accordance with custom and law, the community and authorities commenced processes to select a successor. Initially, in 2019, the Provincial Assembly of Chiefs for Mashonaland East recommended one Edward Tirikoti of the Munhumumwe–Chipitiri house for appointment as Chief Chiota. However, this nominee tragically died before he could assume office.

Following Tirikoti's demise, a fresh selection meeting was convened to determine the next chief. At that meeting, representatives of the Chakabvapasi and Tunha houses raised objections to the continued inclusion of the Chipitiri house in the succession lineup, arguing that the Chipitiri line were not direct descendants of Chivazhe (the founding ancestor) and that, having lost their nominee, the turn should rotate to another house. Notwithstanding these objections, the convened family and community elders resolved that because the previous nominee from the Chipitiri house had passed away before being installed, the entitlement to this round of succession "still lies within the Chipitiri house." Disputes about lineage and paternity were ruled to be internal matters for the Chipitiri house to resolve, rather than issues to be decided in the inter-house forum. Consequently, the Chipitiri house members present unanimously nominated the first respondent, Austin Murwira, as the next Chief Chiota.

According to the minutes of the meeting and affidavits before the Court, it is claimed that no further objections were maintained by the other houses after that resolution was reached. The Mashonaland East Provincial Assembly of Chiefs, in a session held from 26 to 27 September 2024, formally recommended the appointment of Austin Murwira as Chief Chiota, and this recommendation was duly endorsed by the National Council of Chiefs on 24 October 2024. Subsequent administrative formalities were completed, including a clearance of any criminal record for the nominee. The Minister of Local Government then prepared a

memorandum to Cabinet and His Excellency the President, outlining the background and the recommendation. In that memorandum it was noted that the chieftainship rotates among the three houses, that the previous (2019) nominee from Chipitiri house had died, and that after deliberations the Chipitiri house's nomination of Austin Murwira had been agreed to without objection. On 20 December 2024, the President approved the appointment of the first respondent as the substantive Chief Chiota of Marondera District, and a government circular was issued on 30 January 2025 confirming this appointment with effect from that date.

The applicants dispute the finality of the alleged consensus recorded at the selection meeting. They maintain that their grievances were never truly resolved – in their view, the decision to "retain" the chieftainship in the Chipitiri house was flawed and ignored the "prevailing customary principles of succession" for the Chiota community. In affidavits before this Court, the applicants aver that under Chiota custom, the chieftainship should rotate sequentially among the three houses in a fair manner, and that since the Chakabvapasi house had held the throne last, the next in line ought to have been the Tunha house (rather than looping back to Chipitiri out of turn). They further contend that the Chipitiri house's claim is tainted by questions of lineage legitimacy which were improperly brushed aside. In short, the applicants assert that the first respondent's elevation was not done "in accordance with the cultural practices of the Chiota community", as required by law. They consequently approached this Court for relief, arguing that the process resulting in the first respondent's appointment was irregular and should be subjected to judicial review and correction.

The respondents (chief among them the first respondent and the Minister of Local Government, cited in his official capacity) oppose the application. Their primary stance is that the proper procedures were followed in line with both tradition and statute: the dispute was considered by the Provincial Assembly of Chiefs, the National Council of Chiefs gave its endorsement, and the President appointed the candidate who was duly recommended. They argue that the applicants, having participated in the traditional selection processes, cannot invite this Court to overturn a decision that was made under clear constitutional and legislative authority.

At the commencement of the hearing I directed both counsels to address me on the issue of jurisdiction of this court to entertain a substantive challenge to a chief's appointment once the President has exercised his power under the Constitution to appoint a Chief. Given that this jurisdictional point is dispositive, it is necessary to outline the governing legal framework before addressing whether the High Court can intervene in the manner the applicants seek.

The question of jurisdiction in chieftainship matters has vexed our courts for some time. The High Court has in the past delivered divergent decisions on whether it can entertain disputes over the appointment, succession or removal of Chiefs. On one hand, there are decisions suggesting that these disputes are now a political or executive question reserved for determination by the President, to the exclusion of the courts. On the other hand, it has been noted that the High Court's inherent review jurisdiction is not lightly ousted, and that only clear statutory or constitutional language can divest the court of its power to ensure lawful process. The Supreme Court itself has weighed in on this issue in recent years, but misapprehensions have persisted.

Legal Framework

Section 283 of the Constitution of Zimbabwe, 2013 sets out the framework for the appointment and removal of traditional leaders, as well as the resolution of disputes in that regard. It mandates that an Act of Parliament must provide for the appointment, succession and removal of traditional leaders, the creation of new chieftainships, and "the resolution of disputes concerning the appointment, suspension, succession and removal of traditional leaders", all in accordance with the prevailing customs of the communities concerned. The Constitution then lays down important guiding principles in proviso clauses. Notably, section 283(c)(i) stipulates that "the appointment, removal and suspension of Chiefs must be done by the President on the recommendation of the provincial assembly of Chiefs through the National Council of Chiefs and the Minister responsible for traditional leaders and in accordance with the traditional practices and traditions of the communities concerned." Similarly, section 283(c)(ii) provides that "disputes concerning the appointment, suspension and removal of traditional leaders must be resolved by the President on the recommendation of the provincial assembly of Chiefs through the Minister responsible for traditional leaders." (Emphasis added). In essence, the Constitution entrusts the President with both the act of appointing Chiefs and the role of final arbiter in any disputes about such appointments, with the mandatory involvement of the designated bodies of traditional leaders in the process.

Pursuant to section 283, the Traditional Leaders Act [*Chapter 29:17*] is the statute that governs the appointment of Chiefs and related matters. Section 3(1) of the Act empowers and obliges the President to appoint chiefs to preside over communal lands and resettlement areas. Section 3(2) of the Act further provides that in appointing a Chief, the President shall give due consideration to the prevailing customary principles of succession applicable to the community, and, wherever practicable, shall appoint a person nominated by the appropriate

persons in that community in accordance with those principles. The Act thus echoes the constitutional imperative that traditional customs and the community's choice be respected in the appointment process. The Act also anticipates situations where a community fails to nominate a successor within a reasonable time: if no nomination is made within two years of the vacancy, the Minister responsible for traditional leaders is required, in consultation with the community's appropriate persons, to nominate a candidate for appointment as chief. (In the present case, the vacancy persisted for more than two years after 2013, and it appears the eventual nomination in 2019 came well beyond that period. That issue, however, is not central to the determination of this application.)

Of particular relevance to this matter is the statutory and constitutional scheme for resolving chieftainship disputes. The Traditional Leaders Act establishes Provincial Assemblies of Chiefs for each province (comprising all Chiefs in the province) and a National Council of Chiefs. Among the functions of a Provincial Assembly of Chiefs, as set out in section 36 of the Act, is "to consider and report on any matter which is referred to it by the Minister, the [National] Council or a member of the provincial assembly." In practice, this includes considering disputes or competing claims regarding chieftainship successions referred to the assembly. More explicitly, section 286(1)(f) of the Constitution provides that one of the functions of a provincial assembly of chiefs is "to facilitate the settlement of disputes between and concerning traditional leaders" within its province. In harmony with this, section 283(c)(ii) (quoted above) dictates that when there is a dispute over who should be appointed as Chief, that dispute must be resolved by the President upon recommendation of the provincial assembly of chiefs (channelled through the Minister).

Reading these provisions together, the law envisages a domestic traditional dispute-resolution mechanism for chieftainship wrangles. The hierarchy is clear: the matter should be canvassed at the community and provincial chief assembly level, then filtered through the National Council of Chiefs and the Minister, and ultimately a recommendation is placed before the President, who makes the final decision. The courts are not explicitly mentioned in this hierarchy. Indeed, the Constitution's use of the word "must" in section 283(c)(i) and (ii) is deliberate and peremptory – it underscores that the appointment of a chief is to be done by the President and that any dispute about such appointment is to be resolved by the President, rather than by any other actor. It is against this backdrop that the jurisdiction of this Court to intervene in a chieftainship dispute must be assessed.

High Court's Jurisdiction

It is common cause that the High Court of Zimbabwe is a superior court of inherent jurisdiction. In general, section 171(1)(a) of the Constitution confers upon this Court original jurisdiction over all civil and criminal matters throughout Zimbabwe, and section 13 of the High Court Act [*Chapter 7:06*] similarly affirms that, subject to other laws, the High Court has full original civil jurisdiction over all persons and matters in Zimbabwe. There is no express ouster clause in section 283 of the Constitution, nor in the Traditional Leaders Act, that explicitly strips this Court of jurisdiction to entertain disputes relating to Chief appointments. On the contrary, the Supreme Court has observed that nothing in the language of section 283, whether expressly or by necessary implication, evinces an intent to curtail or oust the High Court's jurisdiction. In *Marange* v *Marange & Ors* (SC 1/21), PATEL JA underscored that, even treating section 283 as a substantive provision, its wording does not clearly and unambiguously divest the courts of their ordinary powers of review. Similarly, in *Rutsate* v *Wedzerai & Ors* (SC 45/22), the Supreme Court reiterated that the High Court's broad original jurisdiction remains intact unless lawfully ousted in unequivocal terms – and no such unequivocal ouster appears in section 283 or the current Act. Thus, to the extent that the applicants base their case on the High Court's inherent authority to review administrative conduct or decisions, they are correct that this Court retains the power, in principle, to supervise the legality of the chieftainship appointment process.

However, acknowledging the existence of review jurisdiction in theory is not the end of the inquiry. One must also consider how and when that jurisdiction may be exercised in the sensitive context of chieftainship succession, given the clear constitutional scheme vesting the primary decision-making power in the President. Over the past decade, our courts – both the High Court and the Supreme Court – have grappled with this very question. A divergence of approaches is apparent in the case law, which this judgment must now reconcile.

On one hand, certain High Court decisions in the immediate post-2013 era took the view that section 283's assignment of the dispute-resolution role to the President implies that the High Court should refrain from determining the merits of chieftainship disputes. In *Gambakwe & Others* v *Chimene & Others* HH 465-15 (UCHENA J, 2015) – a case strikingly similar in subject, where community members sought to interdict the installation of a Chief – the court held that the applicants had "come to the wrong forum." It was reasoned that the constitutional mandate in s.283(c)(ii) that disputes "must be resolved by the President" indicates that "only the President should resolve such disputes," to the exclusion of the courts.

UCHENA J observed that if the courts were to also resolve such disputes, it would nullify the President's constitutionally imposed duty; the use of the word "must" was interpreted to mean that the President is "obliged to resolve every such dispute." Furthermore, the Gambakwe judgment rejected an argument that s.283(c)(ii) only comes into play after a chief has already been appointed. The court noted that the provision speaks of disputes "concerning the appointment" of a chief, which phrase plainly "includes disputes which arise before a chief is appointed as long as they have something to do with a chief's appointment." Accordingly, even a pre-appointment contention about who should be nominated as chief is a dispute to be handled within the traditional and executive process, not by the courts. On that basis, the High Court in *Gambakwe* upheld a special plea to its jurisdiction and declined to hear the chieftainship claim, directing the aggrieved parties to pursue their remedies through the provincial assembly and ultimately the President.

A similar stance was taken in *Munodawafa & Ors* v *District Administrator, Masvingo & Ors* HH 571-15, TSANGA J. confronted a similar jurisdictional objection. She agreed with the thrust of *Gambakwe* – recognizing that section 283 created an internal remedy via the President – but importantly added that the High Court "will always be a forum of jurisdiction and for its jurisdiction to be completely ousted would require a specific provision to that effect." In other words, absent an express ouster clause, the High Court retains its fundamental authority, though it may decline to exercise it in deference to the constitutional scheme. TSANGA J. emphasized that the availability of domestic remedies (recommendation through the Chiefs' Assembly and recourse to the President) means this Court should *not readily* step in to adjudicate such disputes. These two High Court decisions, read together, established that while section 283 did not outright repeal the High Court's jurisdiction, the Court would exercise restraint and ordinarily require parties to exhaust the constitutionally provided channels (the Provincial Assembly of Chiefs and appeal to the President) before approaching the courts.

This Court's approach crystallized further in *Silibaziso Mlotshwa* v *District Administrator, Hwange & Others* HB 161-16, 2016 (MATHONSI J, as he was then). In that case, a claimant to a chieftainship (the late Chief Mvuthu's daughter) challenged the nomination of her uncle as chief, raising issues of gender discrimination and customary law. The High Court again upheld special pleas to its jurisdiction, emphatically stating that while the High Court could review procedural aspects of the selection process, "the appointment by the President cannot [be reviewed], as it is executive discretion." The learned judge quoted with approval the observation of MALABA DCJ (as he was the) in an earlier Supreme Court decision (*Moyo* v

Mkoba & Ors 2013 (2) ZLR 137 (S) to the effect that a court may determine whether the information and processes leading to the President's appointment were in accordance with the law – "a justiciable question" – but that the final act of appointment is a prerogative of the President. MATHONSI J concluded: "the process of selection at the level of the provincial assembly and the responsible Minister and the recommendations they make to the President can still be subjected to judicial review, while the appointment by the President cannot, as it is executive discretion." This distinction is pivotal. The courts may scrutinize the process (for example, to ensure that those charged with nominating a candidate did not act ultra vires or unfairly), but the final decision – the actual appointment or removal of a Chief by the President – is not itself subject to reversal by the court.

Even more pertinently, the Court stressed that under the 2013 Constitution, "the dispute must first and foremost be submitted to none other than the President himself for resolution." In *Mlotshwa,* as in *Gambakwe,* the High Court declined to delve into the merits of who was the rightful heir; instead, it left the matter for the President to resolve through the prescribed traditional leadership channels, and the plaintiff's case was dismissed for want of jurisdiction.

On the other hand, the Supreme Court has adopted a nuanced view that preserves the High Court's supervisory jurisdiction to a degree, while still respecting the primacy of the presidential role. In *Marange* v *Marange & Others* SC 1/21, the Supreme Court dealt with a scenario where the High Court had reviewed and set aside the appointment of a Chief (Chief Marange) on grounds that the proper procedure had not been followed. The argument was raised on appeal that section 283 ousted the High Court's jurisdiction in such matters. The Supreme Court (per PATEL JA as he was then) disagreed that there was any textual ouster of jurisdiction, affirming that the High Court "enjoys original review jurisdiction" at common law and that Parliament is free to oust jurisdiction only by clear and unambiguous terms, which were absent in section 283. The High Court, according to the Supreme Court, was therefore entitled to inquire into the legality of the process leading to the chief's appointment. Notably, however, the Supreme Court in *Marange* did not endorse an open-ended power for the High Court to decide who should be Chief. Instead, it struck a balance: it upheld the High Court's right to review procedural misconduct by subordinate functionaries (in that case, the Minister's failure to follow the proper process), but it moderated the remedy granted. The Supreme Court set aside the High Court's order (which had simply nullified the appointment outright) and substituted an order that still set aside the flawed appointment but remitted the dispute back to the proper forum – directing the Minister to convene the Provincial Assembly of Chiefs and

obtain its recommendation, and then for the President to resolve the dispute in accordance with the law. In effect, the Supreme Court enforced the constitutional process: it voided the appointment that had been made ultra vires, yet stopped short of the courts themselves choosing the chief. The matter was sent back into the traditional/executive domain for resolution, albeit under the court's supervision to ensure compliance with the law.

The *Marange* judgment reaffirmed that section 283 is prospective and does not operate retroactively to invalidate disputes or processes that commenced under the old Constitution. More generally, PATEL JA echoed the view that section 283 does not itself bar the courts – unless and until an Act of Parliament clearly says so – and that it chiefly lays down a framework to be implemented. Significantly, the Marange judgment underscored that it is *the process leading to the President's decision*, not the President's decision itself that might be amenable to judicial review. The Supreme Court approved the notion that *"it is not, and would not be, the ultimate decision of the [President] that is subject to review but only the process preceding it."* Thus, once the President has acted on the recommendations and made an appointment in terms of the Constitution, that action "becomes a decision made in terms of the Constitution" and is not ordinarily subject to further challenge. PATEL JA's interpretation in *Marange* has general application beyond the specific procedural posture of that case – it confirms the guiding principle that the High Court cannot set aside a Chief's appointment made by the President, although the court may review whether the correct procedures were observed by those authorities who made recommendations to the President along the way.

Subsequently, in *Rutsate* v *Wedzerai & Others* SC 45/22, the Supreme Court confirmed and clarified the approach. That case involved a protracted chieftainship dispute that had begun before 2013 (under the old Constitution) but was still unresolved after the new Constitution came into force. The Supreme Court held that section 283 of the new Constitution did not have retrospective effect to divest the courts of jurisdiction over disputes that were already pending before 2013. More broadly, the Court echoed *Marange* in observing that nothing in section 283's language explicitly ousts the High Court's jurisdiction, and it went further to emphasize the High Court's unlimited original jurisdiction under the Constitution. At the same time, the Supreme Court acknowledged the intent behind section 283: "Section 283(c) of the Constitution has vested the power to deal with disputes relating to chieftainship in the President as a domestic resolution mechanism." The provision itself is not a self-executing substantive rule, but rather one that "requires operationalization through an Act of Parliament" – which, as noted, the Traditional Leaders Act provides. Crucially, even while stating that the High Court's

inherent power to determine such matters is not ousted, the Supreme Court did not encourage routine court adjudication of chieftainship contests. Instead, it treated the President's role as the proper "domestic remedy" that should be pursued in the first instance.

Synthesizing the above authorities, the following picture emerges:

The High Court retains the jurisdiction to review the legality of the processes and actions of those involved in the appointment of a Chief (e.g. procedural compliance by the Provincial Assembly, the Minister, etc.), since neither the Constitution nor statute explicitly exclude such review. If, for example, the Minister or assembly failed to adhere to a mandatory procedure, the High Court can step in to correct that irregularity.

However, the High Court should not pre-empt or usurp the substantive decision that the Constitution has entrusted to the President. In practical terms, this means the court should not determine who among competing candidates is entitled to be Chief, nor should it overturn a Chief's appointment on the mere basis that another candidate was "more deserving" in the court's view. Those determinations of substance – involving weighing of custom, lineage, and community preference – are reserved for the traditional leadership institutions and ultimately the President's executive discretion. To allow the High Court to settle who should occupy a chieftainship would collapse the separation of powers and the intended role of the Presidency in these matters.

The doctrine of separation of powers looms large in this analysis. The appointment of a Chief is an executive act done by the Head of State, albeit upon advice from constitutionally recognized traditional bodies. It is a sphere where customary law and executive authority intersect. The courts must be careful not to intrude into that domain beyond their constitutional mandate. In this regard, it bears mentioning that even before the new Constitution, our superior courts treated the President's discretion in appointing chiefs as a special category. As MALABA DCJ (as he was then) observed in *Moyo* v *Mkoba (supra)*, while courts may review whether the President was furnished with the correct information and followed the prescribed procedures, the President's actual decision in selecting a Chief from eligible candidates is not one that a court can second-guess. That principle has not been displaced by the 2013 Constitution – if anything, it has been reinforced by the explicit stipulation of the President's role in section 283. The High Court's review powers thus stop at the threshold of the President's door; once the matter enters the President's realm, it is a question of policy, tradition, and executive judgment, not of legality that a court can easily pronounce upon.

Finally, the authorities stress that chieftainship disputes should be resolved within the framework provided by the Constitution. The Provincial Assembly of Chiefs is not an idle institution here – it is the proper forum for aggrieved factions to present their claims and air their disputes. The assemblage of the community's own traditional leaders is presumably best placed to appreciate the nuances of lineage and custom, far more than a court of law. The assembly's recommendation, and the further input of the National Council of Chiefs, feed into the President's decision. This system is designed to be "a domestic resolution mechanism", to use the Supreme Court's apt phrase. Courts should therefore insist that disputants exhaust these routes rather than litigating the matter in the first instance. It was for this reason that UCHENA J in *Gambakwe* emphasized the availability of alternative remedies: the aggrieved parties could "present their grievances to the provincial assembly of chiefs which can in turn include them in its recommendations to the President." Likewise, even after a President's decision, if new disputes or evidence arise, the proper course would be to lobby through the traditional leadership hierarchy and relevant ministry, not to rush to court for a substitution of the executive's decision.

Application of Law to the Present Case

In light of the foregoing exposition, the applicants' case faces an insurmountable hurdle. What they are essentially asking this Court to do is to review and overturn the President's substantive appointment of the first respondent as Chief Chiota. They invite the Court to delve into questions such as whether the Chipitiri house should have been considered at all, whether the rotational custom was correctly applied, and whether the first respondent is the proper heir. Those questions are undeniably disputes "concerning the appointment" of a traditional leader, within the meaning of section 283(c)(ii) of the Constitution. As such, they fall squarely to be dealt with by the President, acting on the recommendation of the provincial assembly of chiefs. Here, that is precisely what occurred: the provincial assembly (fourth respondent) considered the rival contentions and recommended Austin Murwira; the National Council of Chiefs (fifth respondent) endorsed that recommendation; and the President (third respondent), presumably satisfied that the correct customary procedures had been followed, gave his approval and formally appointed the first respondent. In terms of the constitutional scheme, that should be the end of the matter.

The applicants argue that this Court should reopen the matter because, in their view, the process was fatally flawed and did not adhere to custom. They rely on this Court's general powers of review and its duty to ensure legality. Certainly, if the applicants had demonstrated

that some procedural requirement was ignored – for example, if the Minister or officials had bypassed the Provincial Assembly, or if the President had appointed someone without any community consultation – then this Court would have a duty to step in, not to choose a chief itself, but to remedy the procedural irregularity by ensuring the proper process is followed. But in the present case, no such procedural unlawfulness has been established. On the contrary, the evidence reveals that the matter was taken through the envisioned channels: a meeting of the community's representatives was held (where applicants voiced their concerns), the dispute was taken to the Provincial Assembly of Chiefs, and a recommendation was duly made and passed up the chain. The applicants may quarrel with the outcome of that process, but there is no suggestion that the Provincial Assembly failed to convene or that the Minister or National Council refused to transmit a recommendation. In fact, the applicants' grievance is with the content of the recommendation – they insist it should have been otherwise – not with any illegal shortcut taken by the authorities. This is, at its core, a substantive dispute over succession, not a procedural review. As such, it is exactly the kind of controversy that section 283(c)(ii) removes from the purview of the courts and places in the hands of the President acting on the advice of his Chiefs.

It must also be said that the applicants, by participating in the selection process and bringing their arguments before their peers in the traditional leadership forum, effectively invoked the very domestic mechanism that the Constitution provides. They did not sit out and boycott the process; they went, they argued (passionately, no doubt) that the Chipitiri house should not get the chieftainship again so soon or at all. They lost the debate in that forum. Now, dissatisfied with that result, they seek a second bite of the cherry through the courts. To accede to that request would undermine the authority of the Provincial Assembly of Chiefs and the President's ultimate decision. It would set a precedent that any losing faction in a chieftainship wrangle can ignore the outcome of the customary process and litigate afresh in the High Court. That "persistent misapprehension" – that the High Court is a court of appeal in traditional leadership matters – must be dispelled. As UCHENA J put it, allowing parallel resolution by the courts would make a mockery of the President's constitutional mandate, for "how must the President resolve such disputes if the courts can also resolve them?" The correct position is that, save for issues of gross procedural illegality or constitutional rights violations (which have not been alleged here), the High Court should not interfere with the substantive resolution of a chieftainship dispute that has been handled in accordance with section 283. In this case, the President has spoken by appointing the first respondent as Chief Chiota. Whether that decision

was wise, popular, or in keeping with every nuance of tradition is not for this Court to evaluate. What matters is that the decision was made under lawful authority and through the prescribed channels, thereby consummating the dispute-resolution process envisioned by the Constitution.

The applicants' counsel urged that there *"is room for High Court review"* even after a chief's appointment, suggesting that the Court could assess, for instance, whether the President's decision was supported by the evidence of custom or was grossly unreasonable. In effect, the applicants seek a merits review of an executive decision steeped in customary considerations. This line of argument cannot succeed. Our courts have consistently refrained from undertaking merit-based reviews of policy-laden executive decisions, especially where the Constitution directs the matter to a specific functionary. The doctrine of separation of powers demands restraint. The President, in appointing a Chief, acts on recommendations of those with customary expertise; it is not a typical administrative decision made by a bureaucrat, but a constitutional function carried out by the Head of State. While the High Court's doors are never entirely closed – for example, if a President were to appoint someone manifestly ineligible or outside the recommendation framework, that could raise a legal issue – there is no allegation here that the President acted ultra vires. The complaint is that he gave effect to a recommendation the applicants disagree with. That is precisely the scenario where the President's decision is intended to be final.

I therefore make a firm finding that this Court has no jurisdiction to entertain a challenge to the first respondent's appointment as Chief Chiota on its merits. The applicants' case, being a substantive dispute over succession already decided by the President, is not justiciable before this court. It must be noted that this is in line with a string of precedents that caution against such interventions. To the extent that there remained any doubt on the matter, let this judgment put it to rest: the High Court may not review or set aside a President's appointment of a Chief at the behest of a dissatisfied claimant to the title, except in the narrowest of circumstances which do not obtain here.

Proper Forum and Remedy

Having found that the applicants came to the wrong forum, the remaining issue is the appropriate course of action. Dismissing the application for lack of jurisdiction is the logical result. However, it is important that the parties be guided on the correct forum for resolution of their chieftainship dispute. The constitutional and legislative scheme I have outlined points the way: the Provincial Assembly of Chiefs for Mashonaland East (fourth respondent) is the forum where the applicants' grievances should be ventilated, and the President is the authority

who must make the final determination on any unresolved dispute. In practical terms, if the applicants still strongly believe that an error has been made in the appointment of Chief Chiota, their recourse lies in petitioning the Minister of Local Government and the Assembly of Chiefs to reconsider the matter. The Provincial Assembly is empowered to investigate or rehear the dispute if new facts or continuing discontent warrant it, and to make a further report or recommendation to the President. It is then for the President to decide whether or not to alter the status quo (for instance, the President could, upon a proper recommendation, exercise his powers to remove a Chief under section 3(3) of the Act, if good cause is shown). This Court cannot direct the President how to exercise his discretion, but the Court can and will refer the matter to the appropriate authorities to ensure the applicants know where to take their fight.

In *Marange* v *Marange*, SC 1/21, after nullifying an irregular appointment, the Supreme Court remitted the dispute to the provincial assembly and the President for a proper decision. In the present case, the appointment of Chief Chiota is not irregular on its face – it enjoys the presumption of regularity, having followed the required consultative path. Therefore, there is nothing for this Court to "set aside" at law. The most this Court can do is to formally acknowledge its lack of adjudicative authority over the substantive dispute and direct the parties to pursue their remedy through the Provincial Assembly of Chiefs and the President. This course is in line with section 283(c)(ii) and has the merit of respecting the constitutionally designated decision-maker.

Before concluding, the Court notes that this dispute has caused considerable discord in the Chiota community. The role of the courts is not to fan the flames, but to encourage that disputes be resolved fairly and lawfully by those entrusted with that task. It is hoped that the applicants and those they represent will engage the fourth respondent (Provincial Assembly of Chiefs, Mashonaland East) in that spirit, presenting any evidence or arguments they have, so that their concerns can still be given due consideration within the framework of tradition and law. It is also hoped that the Provincial Assembly will not ignore (as they are alleged to have done) addressing the applicants' grievances timeously and in terms of their remit. Ultimately, if the President were to be persuaded that a mistake had been made, the law does provide mechanisms for change. If not, the applicants must reconcile themselves to the outcome, as hard as that may be. What is clear is that this Court cannot grant them the relief they seek.

Disposition

In the result, this Court declines jurisdiction over the matter. The appropriate forum for the resolution of the Chiota chieftainship dispute remains the Provincial Assembly of Chiefs

(Mashonaland East) and His Excellency the President of the Republic of Zimbabwe, in terms of section 283(c)(ii) of the Constitution.

Accordingly, it is ordered as follows:

1. The application be and is hereby dismissed for want of jurisdiction.
2. The dispute concerning the Chiota Chieftainship is referred to the Mashonaland East Provincial Assembly of Chiefs for consideration and recommendation to the President in accordance with section 283(c)(ii) of the Constitution of Zimbabwe.
3. The Mashonaland Provincial Assembly of Chiefs and the responsible Minister, be and is hereby directed, to within 180 days from the date of this order, complete the consultative process and submit a recommendation to the President.
4. There shall be no order as to costs.

MAMBARA J: ……..……..

Lawman Law Chambers, applicants' legal practitioners
Masinire Law Chambers, 1st respondent's legal practitioners