IN THE HIGH COURT FOR ZAMBIA **2013/HP/930**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **THE INTESTATE AND SUCCESSION ACT OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **THE ESTATE OF THE LATE HAMBALA MBEZA**

AND IN THE MATTER:

HIGH COURT OF ZAMBIA
04
PRINCIPAL
29 JUN 2015
REGISTRY
P.O. BOX 50067, LUSAKA

BETWEEN:

HIMUSA B. MBEZA **1ST APPLICANT**

DOREEN MBEZA **2ND APPLICANT**

BRANDON MBEZA **3RD APPLICANT**

(Suing as beneficiaries of the Estate of the Late ***HAMBALA MBEZA)***

AND

NCHIMUNYA MBEZA **1ST RESPONDENT**

NALUKUI MBEZA **2ND RESPONDENT**

(Sued in their capacity as beneficiaries of the Late ***HAMBALA MBEZA)***

Before the Hon. Mrs. Justice A.M Banda-Bobo on the .....day of ....., 2015.

For the Plaintiff/Applicant: In person

For the Defendant/Respondent: Mr. Brigadier Siachitema of M/S Lusitu Chambers

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JUDGMENT

Cases Referred to:

1. ***Dominic Mulaisho v Attorney General (2012) ZR 551.***
2. ***Donovan V Gwentoys Limited (1990) 1 W L R 472.***
3. ***Smith v Clay (1767) 3 Bro. Ch. Ca. 639.***
4. ***Zambia Consolidated Copper Mines Limited v Joseph Daniel Chileshe (SCZ J21 of 2002.***
5. ***Gibson v Manchester City Council (1979).***
6. ***Lusaka City Council and Another v Mwamba and Others (1999) ZR 97.***
7. ***Wagner v Baird (48 US) (7 HOW) 234.***

Legislation and Other Works:

1. ***Rules of the Supreme Court 1999 Edition.***
2. ***Limitation Act 1939 UK.***
3. ***Intestate Succession Act, Cap 59.***
4. ***Stuart Sime – A Practical Approach to Civil Procedure – 14th Edition (Oxford, Oxford University Press)***
5. ***Halsbury's Laws of England, 3rd Edition Volume 15.***

This Judgment was due much earlier, but was delayed due to circumstances beyond my control. I deeply regret the delay.

By way of originating Summons accompanied by an affidavit in support, filed on 4th July, 2013, the three Applicants herein ***(suing as beneficiaries of the estate of the late Hambala Mbeza)*** sought the following reliefs.

(i) An order that House No. 1710, Chelston is a property that forms part of the estate of the late Hambala Mbeza and as such, the Applicants are entitled to its proceeds.

(ii) An order that the said property be sold and proceeds shared by all beneficiaries including the Applicants.

(iii) Costs.

(iv) Further or other reliefs.

The Respondents on 7th February, 2014 filed a notice to raise preliminary issues pursuant ***to Order 14 A/1 of the Rules of the Supreme Court (RSC) 1999 Edition*** and ***Sections 4(3) and 20*** of the ***Limitation Act, 1939 (UK)*** and ***Section 3 of the Intestate succession Act Cap 59 of the Laws of Zambia***. The issues were:-

(i) That the matter is statute barred as it was brought after 12 years which is contrary to section 4(3) of the Limitation Act, 1939 (UK), in light of the fact that the cause of action arose sometime in 1997 when the house was declared vacant and an application for change of Tenancy was applied for and the house was offered to Abigail Mbololwa Maimbolwa in her personal name.

(ii) Whether the Applicants are legally entitled to proceed with this action contrary to section 20 of the Limitation Act 1939 (UK) which bars actions claiming personal estate of a deceased person after 12 years has lapsed, as Mr. Mbeza, whose estate they are claiming under died in 1997.

(iii) Whether by law, an institutional house offered for purchase to a tenant but not purchased by a tenant can form part of the estate of the tenant upon death.

In support, Counsel filed skeleton arguments. He argued the grounds for disposal of a Case on a point of law and referred to the provisions of ***Order 14A Rule 1 of the RSC 1999 Edition*** and submitted that the issues raised are points of law suitable for determination of a matter without full trial. It was submitted that

this is a proper matter for the court to exercise its discretion to dispose the matter on a point of law.

He then dealt with the issue of the matter not having been brought within the twelve year limitation period. Counsel submitted that the action herein is both for the recovery of land and a claim for personal estate of the deceased. It is for recovery of land because the Applicants are claiming an interest in land that was offered to and purchased by the late Abigail Mbolowa Mulambwa. Further, that it is a claim for recovery of personal estate of the deceased person as the Applicants claim that the house in issue forms part of the estate of their late father, Mr. Hambala Mbeza to which they are entitled as children and beneficiaries.

To buttress, the Court was referred to ***Section 4 (3) and 20*** of the ***Limitation Act, 1939 (UK)***, as well as to the case of ***Dominic Mulaisho v Attorney General (2012)***, in which it was held that:

> ***"the Law governing limitation of actions in Zambia is enshrined in the English Limitation Act. The Act applies to Zambia by virtue of the British Act, Extension Act."***

Counsel argued that the Statutory period begins to run immediately on the accrual of the course of action, and if it is brought after the Statutory period has run, the defendant may plead the Statute of Limitation as a defense. There was further reference to the case of ***Mulaisho (Supra)*** where it was held that:

"6. The Statutory time period begins to run immediately on the accrual of the action. That is when the Plaintiff's right to institute a suit arises if he brings the suit after the statutory period has run, the defendant may plead the statute of limitation as a defence."

It was submitted that in the matter in Casu, and in terms of Section 4 (3) of the Limitation Act, 1939 (UK), the Applicant's cause of action accrued when the Lusaka City Council declared the house in issue vacant and available for re-allocation and allocated it to the late Abigail Mbololwa on 1st July, 1997 when the same was offered for purchase to the late Abigail Mbololwa Mulambwa in her personal capacity.

It was argued that the Applicants did not bring the action for recovery of this house within 12 years as per Section 4 (3) of the Limitation Act, 1939 (UK) and that the action having been commenced in 2013, it meant that the same commenced after 16 years. That being the case, their action is Statute barred and should be dismissed. It was argued that the evidence on record is clear that none of the Applicants were under a disability at the time the course of action accrued.

It was, as regards the claim that House No. 1710 Mbawa Road, (The House) formed part of the estate of the late Mr. Hambala Mbeza, contended that the same is Statute barred as it was commenced after 12 years contrary to Section 20 of the Limitation Act, 1939

(UK). It was argued that this Section requires that an action for a claim of personal estate of the deceased person be brought within 12 years from the date the cause of action accrued. It was contended that in this matter, the cause of action accrued in 1997 upon the demise of Mr. Mbeza; and yet this action was only brought in 2013, a period of 16 years after the death of Mr. Mbeza under whose estate they are laying claim to the house which they believe forms a part thereof. It was contended that because of that delay, the action is Statute barred.

Counsel contended that to allow this action to proceed after 16 years will defeat the purpose of section 4 (3) and 20 of the Limitation Act, 1939 as it will cause severe hardship, injustice and prejudice to the Respondents, through no fault of theirs.

There was reference to the works of ***Stuart Sime: A Practical Approach to Civil Procedure, 14th Edition*** ***(Oxford, Oxford University Press)*** where the purpose of the limitation period was summed up as follows:

> ***"Expiry of a limitation period provides a defendant with a complete defence to a claim. Lord Grifiths in Donovan V Gwentoys Limited (6) said "the primary purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is a claim which he never expected to have to deal." If a claim is brought a long time after the event in Question, the***

likelihood is that the evidence which may have been available earlier may have been lost, and the memories of witnesses who may still be available will inevitably have faded or become confused. Further, it is contrary to general policy to keep people perpetually at risk."

It was said, in relation to the above passage, that the same was Quoted with approval by the High Court in the ***Mulaisho*** case (Supra) where it held that:

> ***"5. The Statute of Limitations compels the exercise of a right within a reasonable time so that the opposing party has a fair opportunity to defend, and will not be surprised by the assertion of a stale claim after evidence has been lost, or destroyed with the lapse of time, memories fade and witnesses may die or move. The prospects of impartial and comprehensive fact firmly diminish."***

It was contended that the claim herein is stale as it is being made 16 years after the event giving rise to it. He contended that the Respondent would be prejudiced if they were to face a claim the existence of which they were unaware, and that material witness, including Abigail Mbololwa are long dead. Counsel contended that the injustice to be suffered by the Respondent would be greater than the degree of prejudice if at all any, that the Applicants would suffer in the case. To that end, the Court was invited to consider the

case of ***Donovan V Gwentoys Limited (1990) 1 W L R 472***, where Lord Grifiths said that

"In weighing the degree of prejudice suffered by a defendant it must always be relevant to consider when the defendant first had notification of the claim and thus the opportunity he will have to meet the claim at the trial if he is not to be permitted to rely on his limitation defence."

There was further contention that the Applicants slept on their rights and the time frame of 16 years is too long even for a Court of equity to assist. To that end, the Court was asked to consider the case of ***Smith v Clay (1767) 3 Bro. Ch. Ca. 639*** where Lord Camden stated that

"a Court of equity which is never active in relief against conscious, or public convenience has always refused its aid to stale demands where the party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, a good faith and reasonable diligence, where these are wanting, the Court is passive and does nothing."

It was reiterated that commencing the action after 16 years means that the applicants slept on their rights and acquiesced for a great length of time, which acquiescence has caused the Respondents to adjust their position in reliance.

On the 3rd preliminary issue, namely that an Institutional house not yet purchased cannot become part of the estate of the deceased, the Court was referred to Section 3 of the Intestate Succession Act, Cap 59 of the Laws of Zambia for the definition of **"estate"** which defines it as

> ***"...all assets and liabilities of the deceased, including those accruing to him by virtue of death or after his death and for purposes of the administration of the estate under Part III includes personal chattels."***

It was contended that the house under contention remained the property of Lusaka City Council until it was purchased by the late Abigail Mbololwa Mulambwa after the death of late Mr. Hambala Mbeza; which fact is admitted by the Applicants under paragraph 10 of their affidavit in which the deponent said

> ***"that upon his demise in 1997, on 9th March, we resolved that since the said house was not purchased, we should put it on rent and relocate in a small house so that we channel the rentals towards the purchase price."***

Therefore it neither formed part of the assets of the late Mr. Mbeza nor did it accrue to his estate by virtue of his death. It was contended that the property did not and could not pass upon the death of the late Mr. Mbeza because he was not competent to dispose it as it was not his, but the property of the Lusaka City Council.

To augument this point, Counsel referred to the Learned authors of ***Halsburry's Laws of England, 3rd Edition, Volume 15*** where they made it clear that property which is deemed to pass is property which the deceased was competent to dispose. The authors explained in the same works, the meaning of "competent to dispose" as

"A person is deemed competent to dispose property if he has such power or authority, as would if he were sui juris, enable him to appoint or dispose of it if he thinks fit."

It was argued that at the time of his death on 9th March, 1997. Mr. Hambala Mbeza did not have such powers and authority and could never have disposed House No. 1710 Mbawa Road as he would think fit. It was not his property at the time of his demise and he needed the consent of Lusaka City Council to do almost anything with the said house. It was argued that the claim by the Applicants to a share of the house as beneficiaries under the estate of the late Mr. Hambala Mbeza is misconceived at law and should be dismissed.

He prayed for the dismissal of the action on a point of law for being statute barred and for being misconceived.

The Applicants opposed the application. They argued in relation to Ground One that there had been no dispute involving this house at the time of their parent's demise as it had been agreed to firstly put the house on rent to pay for rentals, and the purchase price. Further, that after the demise of their step mother, it was again agreed that the house be rented out to cover school fees for the young siblings. It was stated that the dispute arose over the share of proceeds from the house after all the siblings became independent. It was contended that the dispute did not arise at the time of their father's demise. They asked that the application on this ground be dismissed because there had been active communication between the parties prior to the commencement of the action.

On the assertion that their step mother applied for change of tenancy in her personal capacity, they contended that this was not true as the same was made because she was a widow of the late Mbeza Hambala. They argued that at that time, the house ownership empowerment Scheme decree had already been made, and for one to buy they needed to be sitting tenants. Since the substantive tenant had passed on, it was only fair and reasonable to transfer the tenancy into the widow's name before finally offering it to her. It was argued that it was in order to infer that she inherited the tenancy from the husband and the consequential offer.

It was contended that the affidavit in support of their Originating Summons clearly showed that the purchase price was generated from subletting the said house and there had been no vacant possession rendered for the Respondents to allege that the house was declared vacant for re-allocation.

On the house being an institutional house, their argument was that the same was a Council house declared to be sold and that since their late father had been offered the same at the time of his death, the offer was transferred to the surviving spouse. That the widow inherited the offer from her late husband, and that being the case, it should be construed that it formed part of the estate of the deceased and all his beneficiaries are entitled to it. It was also contended that the ***Intestate Succession Act*** defines clearly what constitutes the estate of the deceased, namely, any property where the deceased had vested interest. It was argued that the deceased Hambala Mbeza had vested interest in the house in issue and it therefore formed part of his estate. The Court was urged to dismiss the application for lack of merit.

When the matter came up for hearing, Mr. Siachitema, Counsel for the applicant relied on his heads of arguments, and merely emphasized some salient points already in the submissions as the record will show. I will therefore not reproduce his oral submissions.

In response, Doreen Mbeza, the 2nd Applicant speaking on behalf of the 1st and 3rd applicants in the main matter started by saying that on the issue that they stayed for more than twelve years without making claim on the property, it was her submission that they used to call each other for meetings but no one would appear. She indicated that they even went as far as engaging the Administrator General, but nothing helped to resolve the issue.

She also said they were or had been waiting for their school going siblings to finish school before they could talk over this matter. She went over the evidence of how her father got an offer letter to buy the house. That the deceased step mother applied for the tenancy as a widow and had indicated in her application that she had eight children; like her father did and produced documents to that effect.

In reply, Mr. Siachitema said that the evidence on record showed that Mr. Mbeza died in 1997, while the first offer was issued to him in July, 1996, and there was no acceptance of the offer. The second offer was issued to him on 9th September, 1996 and again there was no acceptance, until he died in 1997 March.

He contended that the late Abigail did not apply to continue with the letter of offer from her late husband, but started the whole process of applying for tenancy which she was granted and later was offered to buy under different terms and conditions. Counsel argued that if she was taking over as a widow, it should have been the same offer.

Counsel went further to argue that even assuming, which he was quick to say he was not, that she applied in her capacity as a widow, this happened in 1997. It was his contention that the Applicants had conceded that there had been disputes in the family, and that that was the reason they should have brought the matter to Court within twelve years; and allowing those who were young to finish school did not prevent them from taking an action to have the property removed from the name of Abigail Maimbolwa Mbololwa. It was his reply that they sat on their rights and their decision would not justify extending the limitation period as they all had capacity to take action. He urged the Court to dismiss the action in the interest of justice.

I have carefully considered the affidavit evidence, skeleton arguments and oral submissions by parties herein.

It is not in dispute that the parties herein are siblings, born of the same father, but different mothers; that their father died in 1997. That before his demise, he had been offered, as a sitting tenant, to buy the house in issue on two occasions in 1996, but he neither accepted the offer nor did he make any payment towards the purchase price prior to his sudden demise. That the widow applied to be the new tenant and that the Council had declared the house vacant prior to accepting her as the new tenant. Further, that she purchased the house in her own name after paying the purchase price.

This is as far as the parties are willing to agree.

The Applicants contend that their step mother, Abigail was offered the house because she was their father's widow and merely inherited the offer to buy the house from their father. They contend that the money used to purchase the house came from rentals realized after the family had decided to vacate the house and sublet it to someone who paid the rent and that is the money used to buy the house. It is this house that has become contentious as the biological children of the late Abigail do not want to share the proceeds of the house with the applicants claiming that the house belonged to their mother.

The Applicants claim also that the house forms part of the estate of their deceased father and hence they should all benefit as they were his issue.

The Respondents contend that this action is statute barred, having been brought sixteen years after the action accrued and should be dismissed on a point of law as per ***Order 14 A*** of the ***Rules of the Supreme Court, 1999 Edition of the White Book.***

I will not belabour the point relating to dismissal of a matter on a point of Law under Order 14A as the same is not in contention, and is common cause.

I have to determine whether on the evidence before me, this matter is statute barred; as contended by the Respondents and therefore

determine it without further ado. This contention is grounded, so Counsel argues, on account of lapse of time from the time the action accrued in 1997, as it ought to have been commended within twelve years therefrom. I need to determine whether the Applicants are legally entitled to proceed with this action contrary to ***Section 4 (3) of the Limitation Act (1939) UK,*** which reads as follows:

> ***"4(3) No action shall be brought by any other person to recover any land after the expiration of twelve years from the death on which the right of action accrued to him or if it first accrued to some person through whom he claims."***

There is no dispute about the applicability of the above Act to Zambia as Counsel has ably set out authorities to that effect, so I will not go into detail, suffice to state that limitation periods are normally prescribed by statutes, as in this case, such that any action brought after the expiry of the statutory period cannot be entertained. The reasons for this policy are patent as has been stated by Counsel, but these can be summarized as

i. Long dormant claims have more cruelty than justice in them,
ii. A defendant might have lost evidence to disprove a stale claim,
iii. Persons with good causes of action should pursue them with reasonable diligence.

It is trite that the statutory period for an action begins to run immediately on the accrual of the cause of action. If the same is not brought within the Statutory period, the defendant can plead the statute of limitation as a defence. The limitation period will become operative once a defendant raises it in his defence. The case of ***Collins v West Minster (1985) (QB 581)*** at 600 refers.

In ***Chitty on Contracts***, 26th Edition at paragraph 1949, the authors write that

> ***"The general principle is that once time has started to run, it continues to do so until proceedings are commenced or the claim is barred. The principle is that a Plaintiff who is in a position to commence proceedings and neglects to do so accepts the risk that some unexpected subsequent event will prevent him from doing so within the statutory period ..."***

In ***R. B. Policies at Lloyds v Butter (1949) 2 All ER 223 at 229, 230***, Streatfeild J, stated that

> ***"One of the principles of the Limitation Act, 1939 is that those who go to sleep on their claims should not be assisted by the Courts in recovering their property. But another equally important principle is that there shall be an end to these matters and that there shall be protection against stale demands."***

Despite the statutory limits provided, the Act provides instances where the time limits can be extended, such that an action can be brought outside those set limits. These are cases of disability, acknowledgement, part payment, fraud and mistake. Section 22 (a) of the Limitation Act (1939) UK, provides for instances of extension, one of which is disability of infancy or unsoundness of mind. However, this does not provide a blanket cover. The plaintiff has to prove that a person under a disability was not at the time when the right of action accrued to him, in the custody of a parent.

Other than the above, instances abound where the delay can occur or is occasioned by negotiations entered into by the parties between themselves. In ***Halsbury's Laws of England***, 4th Edition Volume 28, paragraph 807, at page 408, the authors state that

> ***"The mere fact that negotiations have taken place between a claimant and a person against whom a claim is made does not debar the defendant from pleading a statute of limitation, even though the negotiations may have led to the delay and caused the claimant not to bring his action until the statutory period has passed."***

It seems however, that the defendant may be debarred from pleading that the action is time barred if during the negotiations he has entered into an agreement for good consideration not to do so, or the plaintiff has acted on the faith of his representation. This point was eloquently dealt with by our Courts in the case of

Zambia Consolidated Copper Mines Limited v Joseph Daniel Chileshe (SCZ J21 of 2002), where it was held inter alia that

> ***"negotiations would not and do not stop the time from running."***

A further point besides the Statute of Limitation that I think has to be considered in dealing with this matter is the principle of offer and acceptance as a pre cursor to the formation of a contract. This is because this matter arose out of an offer that was made by the Council to Mr. Mbeza to purchase House No. 1710 Chelston. It is trite that there can no contract unless there is an offer which is accepted by the offeree. The case of ***Gibson v Manchester City Council (1979) I W L R 294*** is illustrative and it is almost on all fours with the present matter. The plaintiff in that case followed all the steps to buy a house, but in the end, the Council did not return to him the form on which he had formally made the application to buy the house. The House of Lords held that there was no concluded contract, but at the most an offer by the plaintiff which had never been accepted. The House of Lords preferred to stick to the well tried principles of offer and acceptance.

As a general rule, an acceptance should be communicated to the offeror, and until it is so communicated, and actually received by the offeror the contract is not complete. In the case of ***"The Leonidas" (1985) I W L R 925 at page 937***, Goff, L J said

> ***"It is axiomatic that acceptance of an offer cannot be inferred from silence."***

This is because silence or inaction is merely unequivocal in its significance. Lack of acceptance of an offer terminates and is no longer open to the offeree to change his mind and accept the offer. Unless the offeror renews the offer, the offeror may immediately act on this, for instance by offering the same to a third party. In the case of ***Lusaka City Council and Another v Mwamba and Others (1999) (ZR 97)***, the High Court had adjudged that since letters of offer for purchase of houses had been accepted by the Respondents, contracts had been verbally made and the 1st Appellant was bound to respect the contracts. The decision of the Lower Court was impunged by the Supreme Court, not because it was wrong at law, but because the Supreme Court found that the offers had been made in error, hence they could be withdrawn. The point being that had they not been made in error, the fact of acceptance by the respondents would have meant that a valid contract had been created that would have bound both parties.

Reverting to the matter in casu, the offer was initially made to the late Mbeza in July, 1996. He never accepted the offer and there is no evidence to the contrary. The offer, lapsed, but another one was made in October, 1996, but this too was never accepted. It is common cause that he died without accepting the offer in 1997. This meant that having not accepted the offer at the time of his demise, the offer lapsed as the same was not an offer in perpetuity; and it is known that the same had a time frame attached to it. That being the case, the Council was at liberty to act on the non

acceptance of the offer and offer it to a third party. The Council had a tenant and landlord relationship with the late Hambala Mbeza. When he passed on without accepting the offer to purchase the house, that relationship terminated, and the Council was at liberty to offer the house to someone else. The applicants contend that the late widow inherited the offer to buy the house, which offer their father had not accepted. They did not lay before Court how possible it is to inherit an offer made to an individual, as the fact of its non acceptance in the first place meant it had lapsed.

There is no evidence that the Council offered her the house because she was a widow and was inheriting the tenancy or the offer. There is evidence on record that the Council declared the house vacant and allocated it to her and later offered it to her to buy. It is true that she did state in her application letter that she was a widow, but the determining factor in my view is that widow or not, she qualified to be a tenant in her own right and also qualified to buy the house under the empowerment scheme. I agree with Counsel that if indeed she had inherited the offer from her late husband, she would not have had to make an application to become a tenant and she certainly would not have had to be given a new offer. The act by the Council of making her a tenant and then offering her to buy the house in her name puts paid to the argument that she merely inherited the offer, as a new offer presupposes the lapse of the earlier one.

It was argued that they had agreed to put this house on rent so they could use the proceeds to pay rent and purchase the house. Unfortunately, the applicants have not put before Court any evidence to that effect, perhaps in form of a receipt for the rent collected or indeed to show which house they moved to facilitate this or even mention the name of the tenant to whom they had sublet the property to. They have not disputed the assertion by the respondent that this house was only put on rent after the late Abigail paid 10% towards the purchase price as required, which money, according to the respondent was from the small business her mother was carrying on as well as some money gotten from her own relatives after the husband's relatives, including the applicants in the main matter refused to assist.

The Applicants have denied that there had been a dispute involving the house. However, the 2nd Applicant in her viva voce submissions stated that they would call for meetings but people would not attend, and they went as far as the Office of the Administrator general to have the matter settled, but all in vain. Further, in their affidavit in opposition, the 2nd Applicant under paragraph 11 admits that there were disputes each time they convened to choose an administrator. She goes on to say under paragraph 12 that they were under the impression that the arrears and purchasing were being made from rentals of subletting, but only now they have learnt that the respondent swiftly and in connivance with their deceased mother changed tenancy in a space of one month without their consent.

Two things arise from the above. Namely that the dispute arose in 1997 soon after the demise of Mr. Mbeza, namely one month after, when the tenancy was changed as per paragraph 12 of the affidavit in opposition, where they allege connivance.

Secondly, it shows that the applicants were economical with the truth in their averments in paragraphs 10 and 11 of their affidavit in support of the Originating Notice of Motion, as well as paragraph 15 of the affidavit in reply to the affidavit in opposition to the notice to raise preliminary issues, and the reply to the Notice to raise a preliminary issue. It shows that in their scheme to get hold of the property, they would be willing to twist facts to get what they want. This to my mind shows that there was a dispute regarding this house, which dispute started way back in 1997. I deem therefore that the dispute in this matter arose in 1997 after the demise of Mr. Mbeza and when the late Abigail Mbololwa was made a new tenant and given an offer to buy the house. The Applicants in the main matter have not disputed that they and the family members on their father's side refused to assist in purchasing this house which they now want a part of.

As already seen, any negotiations do not stop time from running. Consequently, the issue of letting the matter slide because there were school going children cannot hold and it worked to their detriment as time does not stop running. There is no evidence in

any case to show that indeed such an arrangement was made or that the Respondents agreed to such an arrangement.

The Applicants, have not disputed that at the time their father died, they were not under a disability that would have stopped them from bringing the action within the stipulated time frame of twelve years from the date of accrual of the action. They have not disputed paragraph 34 of the affidavit in opposition which is to the effect that none of the applicants were minors at the time of the death of their father. They could have brought this action but slept on their rights by neglecting to do so for sixteen years. Having not been under a disability, they cannot take shelter under the umbrella of the extensions provided in the ***Limitation Act 1939 (UK).***

Having not commenced this action within the stipulated time frame, the applicants acquiesced for a great length of time. In the case of ***Wagner v Baird (48 US) (7 HOW) 234*** the Court stated that

> ***"Length of time operates by way of presumption in favour of the party in possession."*** It went on to hold further that
>
> ***"Long acquiescence ...cannot be excused, but by showing some actual hindrance or impediment caused by the fraud, or concealment of the party in possession."***

There has been no allegation of hindrance caused by fraud or concealment by the party in possession. What has been shown here

is mere inaction and consequently, not even equity can come to their aid, as doing so after such a long length of time would certainly be prejudicial to the respondents herein.

In their reply to the Notice to Raise a Preliminary Issue dated 7th march, 2014, the applicants in the main matter stated that the deceased Hambala Mbeza had a vested interest in the house in issue therein and it forms part of his estate. Further that the Intestate Succession Act defines what constitutes the estate of the deceased as any property where the deceased had interest. ***Section 3 of the Intestate Succession Act, Cap 59*** of the Laws of Zambia does indeed define the term "estate" as shown by Counsel for the respondent in his skeleton arguments. I have above hereto shown that at the time of his demise, Mr. Hambala had not accepted the offer to purchase the house. The property remained the property of the Council as he had not acquired any rights over it, having not paid for it. It could therefore not form part of his estate but that of his late wife as there is proof that she is the one who paid for the same. The late Mbeza was not competent to dispose of the property as it never formed part of his estate. It remained the property of the Council, who could dispose of it as it wished.

Having traversed the law and authorities, and evidence before me, I deem that this matter is indeed statute barred, the action having accrued sixteen years prior to it being brought to Court. further, that the applicants cannot, on the same ground, claim the personal

estate of their deceased father as the same was not brought within the stipulated time frame.

Further, the applicants cannot claim the Council house as part of the Late Hambala Mbeza's estate as at the time of his demise he had not acquired any rights to it to enable him dispose of it as part of his estate.

I find that this is a matter which I can dispose of safely on a point of law as per ***Order 14 A of the Rules of the Supreme Court, 1999 Edition.*** The matter is therefore dismissed on a point of law for being statute barred and for being misconceived.

Costs for the respondents to be taxed in default.

Leave to appeal is granted.

DELIVERED THIS .....DAY OF ....., 2015.

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MRS. JUSTICE A. M. BANDA-BOBO

HIGH COURT JUDGE