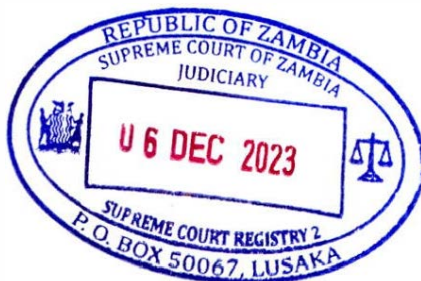


**THE SUPREME COURT FOR ZAMBIA  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**APPEAL NO. SCZ/10/2021**

**BETWEEN:**



**PETER CHINYAMA**

**APPELLANT**

**AND**

**LEGINA HAMUKWELE**

**RESPONDENT**

*(Sued as Administrator of the Estate of the late  
Davison Chipuba Chiinda)*

**CORAM: Musonda DCJ, Kaoma and Chisanga, JJS**

On 5<sup>th</sup> February 2022 and 6<sup>th</sup> December 2023

*For the Appellant* : *Mr. C. Sianondo of Malambo and Co.*

*For the Respondent* : *Ms. Tembo Tindi of Legal Aid Board*

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**RULING**

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**Chisanga JS**, delivered the Ruling of the Court

**Cases Referred To:**

- 1. Vangelatos and Another v. Metro Investments Limited and Others  
Selected Judgement No. 35/2016;***
- 2. Charity Oparaocha v. Winfridah Murumbiwa (2004) ZR 141,***
- 3. Mutale v. Mutale, Appeal No. 141 of 2008;***

4. *Zambia Consolidated Copper Mines Investment Holding Plc v. Mufalali and 141 Others, Selected Judgement No.14 of 2017;*
5. *Tumba & 6 Others v. Zambia Bata Shoes Company Plc Appeal No.140/2012;*
6. *Ventriglia and Another v. Finsbury Investment Limited, Appeal No. 2/2019;*
7. *Mazoka and Others v. Mwanawasa and Others (2005) ZR 138;*
8. *Savenda Management Services Limited v. Stanbic Bank (Z) Limited and Gregory Chifire, Selected Judgement No. 47 of 2018*
9. *Crossland Mutinta and Others v. Donovan Chipanta, Selected Judgement No. 53/2018;*
10. *Edith Siankondo v. Frederick Ndenga (2005) ZR 22;*
11. *BP Zambia Plc v. Lishomwa and Others, Appeal No. 72/2017;*
12. *Mupela v. Engineering Services Corporation Limited, Judgement No. 218 of 2015;*
13. *Mac Foy v. United Africa Co. Limited (1961) 3 ALL ER 1169.*

## **1.0 INTRODUCTION**

1.1 Davison Chipuba Chiinda was a man of reasonable means. He owned a considerable herd of cattle, agricultural equipment and a hammer mill among other things. He used to reside on a farm in Kapiri Mposhi. He had another piece of land known as Farm No. 31 Musuma Settlement in Mazabuka, on which his nephew, Peter Chinyama, resided. He died intestate in July of 1998, being survived by a number of spouses and issue. Legina Hamukwele was one of his daughters. She felt the beneficiaries of the estate had been deprived of their entitlement under the estate by Peter Chinyama.

1.2 Legina Hamukwele commenced an action in the Subordinate Court, claiming for the return by Peter Chinyama, of property

that had belonged to the deceased. Another claim was that Peter Chinyama be evicted from Farm 31 Musuma Settlement. In the course of the hearing, the trial Magistrate added Langson Jopo who was a relative, and Brandina Chilala, who was administratrix of the estate of the late Ben Chilala, as defendants. Langson Jopo and Ben Chilala had allegedly intermeddled in the estate of the deceased.

- 1.3 In the trial Court, a submission was made, at the bar, that the action was statute barred, in that Davison Chipuba Chiinda died on 15<sup>th</sup> July 1998, thirteen years before Legina Hamukwele commenced the action. The explanation proffered for the delay by Legina was that, she had hoped that the matter would be resolved amicably with the help of family members. When resolution of the matter failed, she reported the matter to the police, who advised her to commence an action in court, as they could not take any other action.
- 1.4 The trial Magistrate considered the **Limitation Act 1939**, which is applicable to Zambia by virtue of the **Law Reform (Limitation of Actions etc.) Act Cap 72 of the Laws of Zambia**. In his view, the defendants did not exercise good conscience, justice or equity in distributing the estate. They did so contrary to the **Intestate Succession Act**. He reasoned that the **Limitation Act** originated from common law, and that whenever there was a conflict or variance between the rules of equity and the common law, the rules of equity had to prevail.

He decided, based on Section 15 of the Subordinate Court Cap 28, that he would abide by the rules of equity. He dismissed the assertion that the action was statute barred on this basis, and proceeded with the hearing.

- 1.5 A number of witnesses testified. The trial Magistrate was quite impressed by defence witness number 5, Levison Chiinda. Based on this witness' testimony, the trial court found that the estate of Davison Chipuba Chiinda comprised of 72 heads of cattle, goats, rolls of barbed wire, 2 harrows, 1 planter, 2 cultivators, 2 double ploughs, 6 single ploughs, 10 ox-chains, an ox-drawn Cart, 3 bicycles, 1 hammer mill and 1 Bed ford vehicle. The vehicle had not been fully paid for and was surrendered to the seller, who refunded the money paid towards the purchase. 200 x 90 kg bags of maize, also forming part of the estate, were surrendered as payment in kind, to the transporter of the deceased's property to Mazabuka.
- 1.6 The trial Magistrate found that of all the property, only 3 heads of cattle were distributed to the beneficiaries. As for the rest of the property, he held that only the defendants knew where it was. He entered judgment in Legina's favour, ordering that the property collected by the defendants be returned to her as the rightful administratrix, who would then distribute it to the beneficiaries. The court also found that Peter Chinyama was not given farm 31 by the deceased, having only been left there as a caretaker. He ordered Chinyama to yield up vacant

possession of the farm to Legina, for the benefit of the beneficiaries of Davidson Chipuba Chiinda's estate.

- 1.7 Aggrieved with the outcome, Peter Chinyama appealed against the decision to the High Court. He questioned the holding that the action was commenced within the time limit, and the order that the property be returned to the rightful administrator, without stating who among the defendants was in charge of the distribution. He also impugned the holding that he should vacate farm number 31 without the trial court considering as to when and how he came to the said farm. He was equally dissatisfied with the Magistrate's failure to specify the equitable principle he relied on, from the rules of equity he had decided to apply to the case.
- 1.8 The High Court Judge duly considered the appeal. It was his opinion that Peter Chinyama occupied farm 31 on the authority of Davison Chipuba Chiinda the deceased. Chiinda was in constructive possession of the farm, while Chinyama was cognizant of the fact that he was a caretaker. The farm did not belong to him on account of his lengthy residence there. He had even acknowledged the fact that he could leave the farm if required to do so, during trial. In the learned judge's view, Legina's claim was enough for Chinyama to relinquish the farm to the beneficiaries of the estate of Davison Chipuba Chiinda. Thus, the farm and the goods, being the property of the late Davison Chipuba Chiinda, belonged to Chiinda's children and

his estate, and not to the defendants as claimed. The learned Judge upheld the decision of the trial Magistrate, and dismissed the appeal with costs.

1.9 An appeal against the decision of the High Court was made to this Court, on the following grounds:

**GROUND ONE**

**The Trial Magistrate erred in law and in fact when he held that the action was within time limit when it was commenced 13 years one month and one week after the death of the deceased.**

**GROUND TWO**

**The Trial Magistrate erred in law and in fact when he held that the property be returned to the rightful administrator without stating who of the four defendants was in charge of the distribution of the estate.**

**GROUND THREE**

**The Trial Magistrate erred in law and in fact when he ordered that the 1<sup>st</sup> defendant be evicted from Farm No. 31 Musuma Settlement without considering how and when he came on to the said Farm.**

**GROUND FOUR**

**The Trial Magistrate erred when applying the rules of equity to order the eviction of the 1<sup>st</sup> defendant from**

**Farm No. 31 Musuma Settlement without stating which principle of equity he was relying on.**

**GROUND FIVE**

**The Appellate High Court erred in fact and law when it upheld the lower Court's judgment.**

**GROUND SIX**

**The Appellate High Court erred in law and in facts in failing to rule and decide on other grounds of Appeal before it without advancing any reason for the said default.**

1.10 However, before the appeal was listed for hearing, Mr. Sianondo filed a notice to raise a preliminary objection pursuant to Rule 19 (1) as read with Section 43 of the Intestate Succession Act. The objection was framed as follows:

**The Subordinate Court did not have jurisdiction to hear and determine the dispute over K100,000.00 (unrebased) and consequently the entire proceedings and appeal emanating there from are a nullity.**

1.11 This objection was supported by written arguments filed on the appellant's behalf by Mr. Sianondo. In his endeavour to persuade the Court to uphold his objection, Mr. Sianondo began by conceding that the question he had raised was not raised in the Subordinate and the High Courts. This omission, however, he argued, did not bar the appellant from raising the objection

in this Court. This argument was premised on this Court's decision in **Vangelatos & Another v. Metro Investments Limited & Others**<sup>1</sup>.

1.12 Learned Counsel drew the Court's attention to Section 43 (3) of the Intestate Succession Act, and submitted that the jurisdiction conferred on the Subordinate Court to adjudicate on matters relating to an estate is confined to estates whose value does not exceed one hundred-thousand-kwacha K100,000.00 (old currency). The value of the estate, which comprised of 300 cattle, a hammermill, a Bedford truck, farm implements and cash in the sum of K2,000,000.00 unrebased, far exceeded the value of an estate a Subordinate Court could adjudicate upon. This argument, according to counsel, was supported by decisions of this court in **Charity Oparaocha v. Winfridah Murambiwa**<sup>2</sup>, and **Mutale v. Mutale**<sup>3</sup>.

1.13 Mr. Sianondo argued that this Court has expressed the view that where a Court lacks jurisdiction to hear and determine a matter, any decision it makes is a complete nullity and subsequent appeals from such a decision are null and incompetent. He cited **Zambia Consolidated Copper Mines Investment Holding Plc v. Mufalali & 141 Others**<sup>4</sup> as well as **Tumba & 6 Others v. Zambia Bata Shoe Company**<sup>5</sup>, as decisions on the point by this Court. Counsel also referred to **Ventriglia & Another v. Finsbury Investment Limited**<sup>6</sup> where this Court held that a decision rendered by the Court of Appeal



could not stand, for “*out of nothing comes nothing.*” He maintained that the Court reiterated the principle that “*jurisdiction is everything. Without it, a Court has no power to take any step.*” It was his prayer that the proceedings in the Court below having been a nullity, this Court cannot express itself beyond dismissing the matter.

1.14 The objection was opposed. Mrs. Tembo-Tindi, Counsel for the respondent, submitted that the Notice to Raise a Preliminary Objection indicated that it was brought pursuant to Rule 19(1) of the Laws of Zambia as read with Section 43(9) (3) of the Intestate Succession Act. She observed that it was difficult to identify the rule that was being referred to in the notice, as the exact rule had not been stated. Even assuming that Rule 19 SCR had been invoked, that rule only enables a respondent to raise a preliminary objection. Learned counsel cited **Mazoka & Others v. Mwanawasa & Others**<sup>7</sup> on interpretation of statutes. Urging the Court to read Rule 19 literally, she submitted that the objection mounted by Mr. Sianondo was irregular, and liable to be dismissed.

1.15 Mr. Sianondo replied to the opposing argument. He submitted that this Court’s decision in **Savenda Management Services Limited v. Stanbic Bank (Z) Limited and Gregory Chifire**<sup>8</sup>, suggests that the Supreme Court can invoke inherent jurisdiction to pronounce on matters even where the rules make

no provision for a particular scenario. He also referred to **Crossland Mutinta & Others v. Donovan Chipanta**<sup>9</sup> in similar vein, arguing that it was incumbent on the Court to satisfy itself that the matter was properly before it, even without the objection raised by the appellant.

1.16 The respondent's advocates had similarly filed a notice to raise a preliminary objection before the appeal could be heard. The objection was made pursuant to Rule 19 SCR Cap 25 of the Laws of Zambia, as read with Section 45 of the Intestate Succession Act. It read as follows:

**This appeal is irregularly before the Court because it lacks jurisdiction to hear appeals in succession matters originating from the Subordinate Court or a Local Court as the decision of the High Court on appeal from those courts is final.**

1.17 Mrs. Tembo-Tindi filed written arguments in support of this preliminary objection. Learned Counsel pointed out that the matter was commenced in the Subordinate Court. An appeal against the decision of that Court was made to the High Court, which upheld it. It was argued that in terms of Section 45 of the Intestate Succession Act, a decision of the High Court on the matter is final. This section was considered in **Siankondo (suing in her capacity as administratrix of the estate of the late Edith Siankondo) v. Frederick Ndenga**<sup>10</sup> by the Supreme

Court. According to learned Counsel, the Court acknowledged that Section 45 of the Intestate Succession Act denied it jurisdiction in succession matters originating from the Subordinate and Local Courts.

1.18 Another argument advanced by Mrs. Tembo-Tindi is that the case was *res judicata*. She referred to **BP Zambia Plc v. Lishomwa & Others**<sup>11</sup> where this court held that there must be finality to litigation. It was learned counsel's argument that this court cannot determine the question whether or not the Subordinate Court had jurisdiction to hear and determine this matter. This is because it has no jurisdiction to entertain the appeal, the final appellate court in this matter being the High Court. In addition to this, the appellant was represented during trial, and no issue was raised in the High Court. Mrs. Tembo-Tindi submitted that this court lacks jurisdiction to hear the appeal or entertain any application relating to the appeal. We were urged to dismiss it as a result.

1.19 Mr. Sianondo opposed the respondent's preliminary objection. He argued that the Intestate Succession Act was inapplicable to farm 31, because it did not form part of the estate of Davison Chipuba Chiinda. This is because, according to Mr. Sianondo, Peter Chinyama, who was the deceased's nephew, was entitled to the land from 1984. Therefore, the Supreme Court has jurisdiction to hear and determine the appeal. Mr. Sianondo went on to argue that the Statute of Limitation was raised in the

court below. This Court has jurisdiction to interpret how that statute interacts with the matter before it. Citing **Mupela v. Engineering Services Corporation Limited**<sup>12</sup> counsel argued that the Supreme Court has jurisdiction to interrogate all the issues involved in the action, being the commencement of the action, the position of the parties in 1984 when the matter ensued, and the effect of the Limitation period.

1.20 Finally, it was argued that the issue of jurisdiction is not an intestate succession issue. Learned counsel cited **Mac Foy v. United Africa Co. Limited**<sup>13</sup> where Lord Denning explained the effect of a void act. We were urged to discount the respondent's preliminary objection.

## **2.0 CONSIDERATION BY THE COURT**

2.1 We have given due consideration to the issues raised by the parties. Mrs. Tembo-Tindi has urged us to dismiss the issue concerning the jurisdiction of the Subordinate Court on account of Mr. Sianondo's failure to cite the rule pursuant to which he has moved this court to consider it. She has also argued that since the matter was commenced in the subordinate court, in terms of Section 45 of the Intestate Succession Act, a decision of the High Court on the matter is final. The issue raised by Mr. Sianondo and the second issue raised by Mrs. Tembo-Tindi are both jurisdictional issues. We propose to begin with the one

raised by Mr. Sianondo, as it is, in our view, determinative. Thus, whether or not we deal with the second issue raised by Mrs Tembo-Tindi depends on our decision on the first issue.

2.2 It is true that Mr. Sianondo did not cite the rule he was relying on. We further note, as argued by Mrs. Tindi-Tembo, that Rule 19 SCR allows a respondent to mount an objection to an appeal. The rule does not confer the right to mount an objection to an appeal on an appellant. There appears to be no rule in the SCR that allows an appellant to object to their own appeal. We, at the hearing, directed that the objection be dealt with as a preliminary issue. However, much as we proceeded to hear the issue raised by Mr. Sianondo, we wish to state that it is irregular for a party to raise an objection or preliminary issue to their own appeal, and ask the court to dismiss it. This is the last time we are entertaining an issue brought in this manner. We have proceeded to deal with this issue because the question of jurisdiction can be raised by the court itself, once it notices that jurisdiction is in issue on the record before it. Jurisdiction is the lifeline of proceedings in a court of law, and reposed in a court is the power to examine the presence or absence thereof, before it hears a case.

2.3 It has long been established that a Court that purports to hear and determine a matter without jurisdiction embarks on a fruitless exercise. When such a court hands down a judgment, its decision amounts to nothing. Authority for this proposition

abounds. See for instance ***Vangelatos and Another v. Metro Investments Limited and Another***<sup>1</sup>, where we made this pronouncement:

*“It can be discerned from the foregoing position of the law, that the absence of jurisdiction nullifies whatever decision follows from such proceedings. This is the position because the power of this court (like of any other court created by the constitution) to adjudicate upon a matter in terms of Articles 118 and 119 of the Constitution of Zambia Act is vested in it by the people of Zambia to be exercised justly in accordance with the Constitution and any other laws. The exercise of such power, in the absence of jurisdiction, amounts to an abrogation of the confidence reposed in the courts by the people and a contravention of the Constitution and any other laws. There is, therefore need to cure such a defect at any adjudicature level and on appeal, whether or not it was an issue in the Court below.”*

2.4 We took the approach enjoined in the *Vangelatos* case in ***Mutinta and Another v. Chipanta***.<sup>9</sup> In that case, the trial magistrate tried a matter concerning land without obtaining the consent of all the parties, as required by *Section 23 of the Subordinate Court Act, Cap 28 of the Laws of Zambia*. The High Court upheld the decision of the trial magistrate. The losing party appealed to this Court. We upheld the appeal, because without jurisdiction, the decision of the Subordinate Court

amounted to nothing. The High Court ought not to have entertained the appeal as a result.

2.5 The present case presents similar circumstances. The matter was purportedly commenced pursuant to the *Intestate Succession Act, Cap 59 of the Laws of Zambia*. Section 43 addresses jurisdiction:

**43(1) The High Court shall have jurisdiction in matters relating to succession.**

**(2) A Local Court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand Kwacha.**

**(3) In matters relating to succession, a Subordinate Court of the first, second or third class shall, within the territorial limits of its jurisdiction, have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand Kwacha.**

2.6 The import of Section 43 (3) is that for a Subordinate Court to entertain a matter relating to succession, the value of the estate must not exceed one hundred thousand Kwacha (old currency). Currently, this value is K100. The Subordinate Court has no jurisdiction to hear and determine a matter relating to succession under the Act if the value of the estate exceeds K100. If it does so, contrary to Section 43 of the Act, it's decision

amounts to nothing. Put differently, there is in such a case no determination of an intestate succession matter as envisaged in Section 43 (3).

2.7 We are mindful that the appeal before this Court arose from proceedings which were a nullity. This was the case in the *Crossland* case cited above. We in that case, nonetheless, dealt with the matter, by dismissing it. The rationale for this approach is explained in *Halsbury's Laws of England 4<sup>th</sup> Edition volume 10, paragraph 717*, where the learned authors state the following:

***“It is the duty of an appellate Court to entertain a plea as to jurisdiction at any stage, even if the point was not raised in the Court below.”***

2.8 We reiterated this principle in the *Vangelatos* case cited above. We have, in the instant case, a judgement that ensued from proceedings that were null and void. The judgement was purportedly upheld by the High Court. The result is that both judgements amount to nothing. The hearing in the Subordinate Court was an exercise in futility. So was the appeal to the High Court. We cannot entertain the purported appeal, as there is nothing to entertain. The preliminary issue raised by the appellant is upheld. For avoidance of doubt, we set aside the proceedings and the purported judgement in the Subordinate



Court, and the subsequent decision in the High Court as they are null and void. They amount to nothing.

2.9 On the view we have taken, the issue raised by Mrs. Tembo-Tindi, falls away. Each party will bear own costs.



.....  
M. C. Musonda  
**DEPUTY CHIEF JUSTICE**



.....  
R. M. C. Kaoma  
**SUPREME COURT JUDGE**



.....  
F. M Chisanga  
**SUPREME COURT JUDGE**