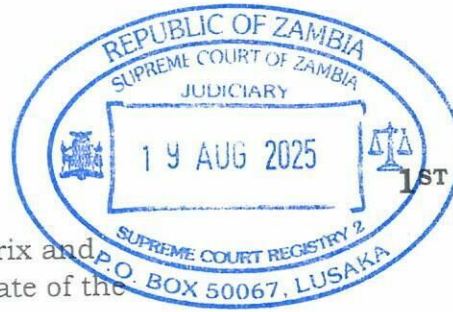


**IN THE SUPREME COURT FOR ZAMBIA      APPEAL NO. 294/2021**  
**HOLDEN AT NDOLA**  
**(Civil Jurisdiction)**

**BETWEEN:**

**CHAMA CHELEMU**

(Suing as Beneficiary, Administratrix and  
Personal Representative of the Estate of the  
late Weddie Chemlesya Chelemu)



**1<sup>ST</sup> APPELLANT**

**MARGARET CHELEMU**

(Suing as Beneficiary, Administratrix and  
Personal Representative of the Estate of the  
late Weddie Chemlesya Chelemu)

**2<sup>ND</sup> APPELLANT**

**CAROLINE CHELEMU**

(Suing as Beneficiary, Administratrix and  
Personal Representative of the Estate of the  
late Weddie Chemlesya Chelemu)

**3<sup>RD</sup> APPELLANT**

**AND**

**ODILE LOUKOMBO 'CHELEMU'**

**RESPONDENT**

**CORAM: Musonda, DCJ, Kabuka and Mutuna, JJS**

**On the 4<sup>th</sup> of March, 2025 and 19<sup>th</sup> August, 2025.**

**FOR THE APPELLANTS:** Mr. P.K. Chibundi, Messrs. Mosha &  
Company

**FOR THE RESPONDENT:** Mr. L. Phiri, Messrs. August Hill  
Associates

---

**JUDGMENT**

---

**KABUKA, JS, delivered the Judgment of the Court.**

**Cases referred to:**

1. **Peter David Lloyd v J.R. Textiles [2015] ZMSC 50**
2. **William David Carlisle Wise v E. F. Hervey Limited [1985] ZR 179**
3. **Letang v Cooper {1965} 1 Q.B. 232 at 242**
4. **Baidala Levi Mwanza (Male) v Harrington Akombwa and 7 Others SCZ Appeal No. 154 of 2015**

**Legislation and Other Works referred to:**

1. **Intestate Succession Act Cap. 59 S.5 (1) (d)**
2. **Limitation of Actions Act of 1939 SS. 4(3), 10, 15, 26**
3. **British (Extent of Application) Act Cap. 10, S. 4**
4. **Supreme Court Rules (White book) 1999 Edition O.14A, 33, 18/8**
5. **High Court Act Cap. 27 S.13**
6. **Lands and Deeds Registry Act Cap. 185 SS. 11(1), 33,34,35**
7. **Property Transfer Tax Act Cap. 340 S.6**
8. **Halsbury's Laws of England 3<sup>rd</sup> Edition Vol. 18 at page 364 paragraph 692**
9. **Blacks Law Dictionary, 8<sup>th</sup> Edition, 2007, Thomson West, pages 1450 to 1451**

**Introduction**

1. The Court of Appeal delivered a judgment dated 4<sup>th</sup> November, 2024 by which it determined that annulment of a marriage, did not invalidate property transferred by Weddie Chemlesya Chelemu (the deceased), to the respondent Odile Loukombo 'Chelemu' during the subsistence of their purported marriage.
2. The Court of Appeal further considered that the deed of transfer of the property was executed by the deceased on 22<sup>nd</sup> November, 2004 while the appellants only commenced the action challenging the transfer more than twelve (12) years later, on 22<sup>nd</sup> May, 2020. Premised on those considerations,

the Court of Appeal concluded that the appellants' action in Cause No. 2020/HP/0219 was statute barred.

3. Unhappy with the Court of Appeal judgment, the appellants have now escalated their grievance to this Court seeking a reversal of the statute bar finding. In the event that the appeal is successful, this Court can order that the High Court proceeds with the hearing of the action challenging the transfer in Cause No. 2020/HP/0219.

### **Background**

#### *Proceedings Before the High Court in Cause No. 2017/HPF/0028*

4. The history of the case relevant to the determination of this appeal is that, on 6<sup>th</sup> July, 2017 the 1<sup>st</sup> and 2<sup>nd</sup> appellants issued an originating summons in the Family Division of the High Court in Cause No. 2017/HPF/0028. The proceedings were brought against the respondent as administratrix of the deceased's estate, together with two other co-administrators. The relief sought was stated as: (i) a declaration that their father, Weddie Chemlesya Chelemu ("deceased") who died on 15<sup>th</sup> May, 2012 and the respondent were not legally married; (ii) an order to have the grant of letters of administration

issued to the respondent and her two co-administrators, revoked for their failure to administer the estate.

5. In support of the first relief, it was contended that the deceased was already married under statute to one, Thelma Elizabeth Chelemu, at the time of contracting his purported marriage to the respondent. The appellants were, on that premise, seeking a declaration that the respondent was not a widow.
6. Following trial of the matter, the learned High Court Judge Salasini, J, in her judgment rendered on 28<sup>th</sup> February, 2020 in considering the first relief sought by the appellants relied on two marriage certificates that were produced in evidence. Her finding was that the said documents had established the deceased was indeed married under statute to one, Thelma Elizabeth Chelemu, at the time he purportedly, contracted another marriage with the respondent in Congo Brazzaville, in 1992.
7. Having so found, the trial Judge granted the declaratory order sought by the appellants that the marriage between the deceased and the respondent was void. The trial Judge went on to hold that the respondent was not entitled to inherit from the deceased estate as a widow, but that she satisfied the

criteria of a dependent, as provided in **section 5 (1) (d)** of the **Intestate Succession Act, Cap. 59 of the Laws of Zambia**.

8. The second relief, as stated in paragraph 4 (ii) was equally granted. The respondent and her co-administrators were ordered to vacate their said capacities for failure to administer the estate.

High Court Action in Cause No. 2020/HP/0219

9. On the strength of the declaration that the marriage between the deceased and the respondent was void, the appellants on 22<sup>nd</sup> June, 2020 proceeded to issue a writ of summons against the respondent from the High Court Principal Registry, at Lusaka, in Cause No. 2020/ HP/0219.
10. In the Statement of Claim accompanying the writ, the appellants contended that the deceased had purchased Plot No. 29 Jesmondine, Lusaka (“the property”) in 1990. He was issued a Certificate of Title in his names on 10<sup>th</sup> May, 1993. Thereafter, the deceased retired from employment with the World Health Organisation (WHO) from Congo Brazzaville where he was based at the material time. He came back to Zambia with the respondent the same year and lived in a four bedroomed house located on the property. Other developments

also on the property, include income generating flats, a cottage and servant's quarters.

11. In 1994, which was barely a year into his retirement, the deceased suffered a stroke, was hospitalized and placed on medication.
12. Ten years later, on 22<sup>nd</sup> November, 2004 the deceased executed a deed of transfer by which he transferred the property in question to the respondent.
13. In 2006, the deceased suffered a second stroke. He, as a result, was rendered partially paralyzed, bed ridden and in constant need of medication. He continued taking this medication upon his discharge and referral to home based care.
14. During the ensuing period of about six years, the deceased's daily personal care, medical needs, including feeding, were provided solely, by the respondent. In addition, the respondent took charge of the deceased business and other attendant responsibilities.
15. The appellants alleged that assuming the responsibilities alluded to in para 14 gave the respondent access to the deceased's personal documents, including those relating to the property in question. They contended that the deceased had a

number of other properties that he did not transfer to anyone during his lifetime.

16. According to the appellants, the deceased's character disposition was not such as could be inclined to gift the property in question for nil consideration. If at all he did, then in that event, it was unconsciously so, due to ill health and manipulation by the respondent.

17. The appellants asserted that they were fortified in taking that position as the respondent was not a Zambian citizen at the time of the transfer, which rendered the transaction illegal.

Anchored on those contentions, the appellants claimed:

- (i) *that the purported Deed of Transfer for the property from the deceased to the (respondent) registered on 22<sup>nd</sup> November, 2004 be declared null and void;*
- (ii) *the Certificate of Title No. 33429 issued in her name be cancelled;*
- (iii) *an order be made reverting the property to the deceased, represented by the (appellants) as administrators of the estate;*
- (iv) *the (respondent) vacates and gives up possession of the property to the appellants in their said capacity;*
- (v) *pending determination of the matter, the (respondent) be restrained by an interlocutory injunction from disposing of or encumbering or in any way dealing with the property;*
- (vi) *the (respondent) be accountable and pay mesne profits for occupation of the property and the rent received from the*

*flats situated thereon, from 15<sup>th</sup> May, 2012 to the date of giving up vacant possession.*

16 On 16<sup>th</sup> October, 2020 the respondent settled a defence and counter-claim to the action denying the appellants' claims. She averred that she was bequeathed the property as a gift, by deed of transfer executed by the deceased on 22<sup>nd</sup> November, 2004. She had also been resident in Zambia from 1993 and acquired citizenship in 2013. Following his death on 15<sup>th</sup> May, 2012 she was the deceased's surviving spouse, until the High Court in Cause No. 2017/HPF/0028, by judgment dated 28<sup>th</sup> February, 2020 declared her a dependent.

*Preliminary Issue raised by the Respondent*

18. Before the matter could proceed to trial in the High Court, the respondent on 23<sup>rd</sup> June, 2021 filed an application raising a preliminary issue on points of law. The application was made pursuant to **Order 14 A** as read with **Order 33** of the **Rules of the Supreme Court of England (White book), 1999 Edition;** and **section 13** of the **High Court Act, Cap. 27**. The preliminary issue questioned whether the appellants action was not statute barred for having been commenced on 22<sup>nd</sup>

June, 2020 a period spanning over twelve (12) years from the time when the property was transferred on 22<sup>nd</sup> November, 2004. **Sections 4 (3) and 15** of the **Limitation of Actions Act, 1939 (Limitation Act)**, applicable in our jurisdiction by virtue of **The British (Extension of Application) Act, Cap. 10** were cited as authority.

19. In response to the preliminary issue, the appellants averred that the illegalities tainting the transfer and rendering it a mistake, were only discovered after they took over as administrators of the deceased estate. This was following the High Court judgment of 28<sup>th</sup> February, 2020 that annulled the marriage. The cause of action therefore, only arose from that date and the matter was not statute barred.
20. The preliminary issue as to whether or not the action was statute barred was heard by the learned High Court Judge, Newa J. In her ruling dated 8<sup>th</sup> September, 2021 the learned Judge citing **section 10 of the Limitation Act**, observed that the respondent as registered owner, could not be said to be in adverse possession of the property. On that premise, she found the Act did not apply. The trial Judge concluded that the cause of action regarding what property formed part of the deceased estate only arose from the date of his death, on 15<sup>th</sup>

May, 2012. The matter, as a result, was not statute barred. She also noted that although the appellants alleged mistake in the transfer of the property, mistake was not specifically pleaded as the basis for extending the Limitation period. For the said reason, it did not arise as an issue requiring the court's consideration

### **Respondent's appeal to the Court of Appeal and Decision**

21. Unhappy with the ruling of the High Court on the preliminary issue, the respondent launched an appeal to the Court of Appeal. Two grounds of appeal were advanced by which the trial Judge was faulted as having erred in both law and fact when she held that the limitation period:

- (i) *began to run on the date on which the deceased died;*
- (ii) *would not apply in a situation where a party wishing to plead the statute of Limitation is not in adverse possession of the property.*

22. Upon consideration of the appeal, the Court of Appeal found there was no issue with the deceased bequeathing the property to the respondent in 2004, as there was no evidence that he was mentally incapacitated at the time. The Court of Appeal noted that the High Court Judge properly found that the appellants did not plead mistake, as by law required.

23. On the finding of the High Court Judge that the cause of action regarding what property formed part of the deceased estate only arose when he died on 15<sup>th</sup> May, 2012 the Court of Appeal observed that this property was already on title and belonged to the respondent. The property could not, therefore, form part of the deceased estate, unless the Certificate of Title was successfully challenged and cancelled, as provided in **sections 33 to 35** of the **Lands and Deeds Registry Act**.
24. The Court of Appeal opined that, as personal representatives of the deceased, the appellants were caught up by **section 4 (3) and 15** of the **Limitation Act**. In terms of those sections, the appellants were not entitled to time within which to bring an action that the deceased himself could have brought during his lifetime.
25. The Court of Appeal considered the appellants contention that time started to run from the 28<sup>th</sup> of February, 2020 when the High Court declared the marriage of the deceased to the respondent void. The Court determined that, nullification of the marriage did not affect the Certificate of Title to the property which remained valid.

## Grounds of appeal to this Court

26. Aggrieved with the judgment, the appellants have come on appeal to this Court advancing four grounds, in which they fault the Court of Appeal as having erred in law when:

1. **it dismissed the legal effect of a nil consideration bequeathal on a property in light of the annulment of the marriage of the respondent to the deceased.**
2. **it held that annulment of the marriage between the respondent and the deceased, did not invalidate actions only legally tenable if there was a valid marriage at the time of their execution.**
3. **it failed to give effect to the consequences of the annulment of the marriage between the respondent and the deceased.**
4. **it held that the appellants action was statute barred when the cause of action to challenge the validity of the transfer of the property, could only have arisen after the annulment of the marriage on which it was anchored.**

### Appellants' Heads of Argument in support of the Appeal

27. In Heads of argument filed on 27<sup>th</sup> January, 2025 the appellants on ground one of the appeal, argued that the deed of transfer by which the property was conveyed at nil consideration was untenable to a person who was in fact not a spouse. The High Court having found the marriage of the respondent to the deceased was *void*, transfer of the property in question should be considered *null* and *void*. For those reasons, it was submitted that the Certificate of Title issued in the respondent's name should be cancelled. **Section 11(1)** of

the **Lands and Deeds Registry Act**, was called in aid of the submission. The section reads as follows:

11.1 “Where any person alleges that any error or omission has been made in a Register or that any entry or omission therein has been made or procured by fraud or mistake, the Registrar shall, if he shall consider such allegations satisfactorily proved, correct such error, omission or entry as aforesaid”.

28. Reference was further made to **The Property Transfer Tax Act, Cap. 340** which in **section 6** enacts that:

6(3) “Where property is settled in trust for the benefit of a member of the immediate family of the settler, the transfer of such property realized value of such property to the trustees or the transfer by the trustees to such beneficiary shall not be liable to tax”.

**Section 2** of the same Act, defines immediate family in the following terms:

“immediate family” means a spouse, child, a duly adopted child or step child”.

29. Counsel referred to the marriage *in casu* that was found to have been void for the submission that, according to **section 6** as reproduced above, the respondent did not qualify to have a property transferred in her name for nil consideration. It was contended that the alleged illegalities surrounding the transfer are what compelled the Registrar of Lands to issue the Certificate of Title in the name of the respondent by mistake.

We were urged to order cancellation of the Certificate of Title and have the property revert to the estate of the deceased.

30. Grounds two and three were argued together and the crux of the submission was that, the effect of the annulment of the marriage between the deceased and the respondent is that their marriage never legally happened. According to Counsel, the question arising from those circumstances requiring a pronouncement by this Court, can be stated as being whether:

*“A marriage declared null and void, implies that all actions undertaken on the basis of that marriage are invalid? Or put differently, did the time for limitation purposes begin to run in 2004 when the property was transferred, or in 2020 when the deceased and respondent’s marriage was nullified by the High Court?”*

31. Counsel went on to submit that, all acts undertaken on the strength and basis of existence of the marriage subsequently, pronounced as null and void by a court are invalid. He reiterated that such actions cannot survive the annulment of the marriage with effect from the date of pronouncement, *in casu* being, the 28<sup>th</sup> of February, 2020.

32. Finally, on ground four of the appeal, the appellants on this ground maintained their position that the mistake was only discovered on 28<sup>th</sup> February, 2020 when the High Court delivered its judgment declaring the marriage void. **Section 26 of the Limitation Act**, which provides for postponement of

the limitation period in case of mistake or fraud, was relied on for the submission that, the period of limitation could only run after 28<sup>th</sup> February, 2020. The action commenced barely four months later, on 22<sup>nd</sup> June, 2020 was not statute barred.

*Respondent's Heads of Argument opposing the Appeal*

33. In their Heads of argument filed with leave of Court at the hearing of the appeal on 4<sup>th</sup> March, 2025 Counsel for the respondent argued grounds one, two and three, together. This was on the premise that the said grounds were interrelated, as they were all anchored on annulment of the marriage.
34. The submission on those grounds was that, mistake is a defence which must be specifically pleaded by a party seeking to rely on it as provided by **RSC Order 18/8**. A number of decided cases were also cited to underscore that position.
35. As mistake was not pleaded, Counsel for the respondent argued that at most, if this Court disagrees with the Court of Appeal judgment, it can remit the matter to the High Court for determination, as any decision beyond that would amount to prejudging the matter. We were urged to decline adjudicating on the issue of cancellation of the Certificate of Title prayed for

by the appellants that is subject of the action yet to be heard and determined by the High Court.

36. In the event that we decided to consider cancellation of the Certificate of Title as prayed for by the appellants, the submission in the alternative was that, the status of the marriage of the respondent to the deceased does not result in the transfer of the property having been illegal. It also does not affect the validity of the Certificate of Title obtained by the respondent.
37. On the issue of non-payment of tax, Counsel simply submitted that, failure to do so does not satisfy the grounds for vitiating a Certificate of Title under **section 34 of the Lands and Deeds Registry Act**.
38. On ground four of the appeal, Counsel for the respondent argued that the basis on which the Court of Appeal ruled the appellants action as statute barred was that the respondent is the registered owner of the subject property, as opposed to being in adverse possession of the same. This was the basis on which the High Court similarly, albeit wrongly so, found that the respondent was the registered owner. In terms of **section 10 of the Limitation Act**, the respondent as registered owner was not in adverse possession and, as a

result, ineligible to raise the issue of time bar anchored on **section 10**. Reference was made to the decision in the case of **Peter David Lloyd v J.R. Textiles<sup>1</sup>** with regards to **section 10 of the Limitation Act**, where it was opined as follows:

*“..... by section 10 of the said Act, in Order that a right of action should accrue, thereby triggering the commencement of the limitation period, the land concerned must be in adverse possession of some person in whose favour the period of limitation can run....*

*.....**possession is never “adverse” if enjoyed under a lawful title or by the leave or license of the proper owner.** But a licensee whose license has terminated or expired rapidly acquires the status of an adverse possessor in whose favour time can begin to run”. (boldfacing and underling supplied)*

39. The submission on the point was that, only one in adverse possession of land for a period of twelve (12) years can raise the defence of statute bar pursuant to **section 10**. As title holder of the property, the respondent was not in adverse possession and **section 10** was inapplicable.
40. In addressing the other reason raised by the appellants as vitiating lawful transfer, being that, the deceased was of unsound mind at the time of transfer, learned Counsel argued that if that were indeed so, then his next friend or legal representative at the time, ought to have raised that issue. It was submitted that the doctrine of relativity of actions, dictates that an administrator steps into the shoes of the

deceased. Time continues to run from the time the cause of action accrued and limitation periods cannot restart upon the appointment of an administrator.

41. Counsel reiterated the respondent's position that the cause of action in this matter accrued at the point of the transfer on 22<sup>nd</sup> November, 2004. It did not accrue on the death of the deceased on 15<sup>th</sup> May, 2012; annulment of the marriage or appointment of administrators, on 28<sup>th</sup> February, 2020. Counsel for the respondent reaffirmed his position that the appellants claim is statute barred.

### **Consideration of the appeal and Decision of this Court**

42. When the appeal came up for hearing before us on 4<sup>th</sup> March, 2025, learned Counsel for the parties on both sides relied on their written Heads of argument filed on record, which they briefly, augmented orally, highlighting the salient points. We have considered the Heads of arguments, oral submissions, the law, cases cited and other authorities to which we were referred and for which we are indebted.
43. Upon perusal of the grounds of appeal, we find grounds one, two and three of the appeal are indeed inter-related, as observed by learned Counsel for the respondent. The said

grounds are all anchored on the status of the marriage that was declared void by the High Court.

44. Ground four of the appeal, faults the Court of Appeal for the finding that: **“the appellants action was statute barred when the cause of action to challenge the validity of the transfer of the property, could only have arisen after the annulment of the marriage on which it was anchored”**.
45. We find the issue raised in ground four of the appeal is simply, when did the cause of action accrue? The corollary question is whether the appellants action commenced on 22<sup>nd</sup> June, 2020 is statute barred? Accordingly, the viability of grounds one to three of the grounds of appeal, will be impacted by our determination of ground four of the appeal. Whether or not, the High Court can proceed to hear the matter in Cause No. 2020/HP/0219, will also be impacted by the determination of this ground. It is for those reasons that we propose to first deal with ground four of the appeal and depending on our determination, proceed to consider grounds one to three.
46. As reproduced in paragraph 44, ground four of the appeal captures the real issue that gave rise to this appeal. The background facts as recounted earlier in this judgment, reveal that this appeal stems from an interlocutory ruling of the High

Court on a preliminary issue raised by the respondent. The respondent was objecting to hearing of the matter in Cause No. 2020/HP/0219 contending that the cause of action accrued upon transfer of the property on 22<sup>nd</sup> November, 2004. The action having been commenced more than twelve (12) years later, on 17<sup>th</sup> May, 2020 was statute barred.

47. The appellants in response to the objection countered that time only started to run on 28<sup>th</sup> February, 2020 when the marriage of the deceased to the respondent was declared void. Their action that was commenced two months later, on 22<sup>nd</sup> June, 2020 could not therefore, be said to have been statute barred.
48. Two questions arise from those diverse positions, respectively, taken by the respondent and the appellants. These are (i) when does a cause of action accrue and time start to run; and (ii) when did time start to run on the particular facts of this appeal?
49. In its ruling dated 8<sup>th</sup> September, 2020 the High Court found that time only started to run from the date of demise of the deceased on 15<sup>th</sup> May, 2012 as that is when the question of what property formed part of his estate arose.

50. On appeal to the Court of Appeal, by the appellants, that Court found that the property was by deed of transfer gifted to the respondent by the deceased, *inter vivos*. In addressing different kinds of gifts and what constitutes a gift *inter vivos*, **Halsbury's Laws of England 3<sup>rd</sup> Edition at page 364 paragraph 692** state that:

“A gift *inter vivos* may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death”.  
(underlining for emphasis only)

51. In *casu* the Court of Appeal considered that the deed of transfer was registered and a Certificate of Title issued in the respondent's name on 22<sup>nd</sup> May, 2004. It found that to be the date that the cause of action accrued. The Court concluded that as the respondent was the registered owner, the property did not form part of the deceased estate. Any challenge to the Certificate of Title could only be properly brought as provided in **section 33 to 35 of the Lands and Deeds Act.**

52. The pertinent facts of the matter, as recounted in paragraphs 45 to 51 attest to the various positions taken by the parties and the Courts below, as to when time started to run for purposes of determining whether or not the appellants action in Cause No. 2020/HP/0219 is statute barred. Lord Diplock

in the case of **Letang v Cooper** stated that a cause of action arises when there is:

*“... a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person.”*

53. The text, as quoted above, was cited with approval by this Court in **William David Carlisle Wise v E. F. Hervey Limited**<sup>2</sup>. Ngulube, AG. C J, as he then was, held that:

**“(ii) A cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right or entitlement to a judgment in his favour against the other”.**

54. In that regard, the appellants have argued that the property was transferred by the deceased to the respondent on the mistaken belief that she was his wife. On 28<sup>th</sup> of February, 2020 however, the High Court nullified the marriage when it declared it void. Time, therefore, only started to run from 28<sup>th</sup> February, 2020.

55. The argument by Counsel for the appellants calls into question, the effect of a declaration that the marriage between the deceased and the respondent as one that was void. When the issue arose in the old English case of **Adams v Adams**<sup>1</sup> a void marriage was distinguished from one that was voidable in the following observation:

**“Some confusion has been caused, in legal discussion upon the difference between a decree of nullity and a decree of divorce in regard to their respective effects upon the pre- existing marriage, by the use of the words “void” and “voidable.” It has been said that, in the case of divorce, it is good law to speak of the marriage as having been voidable, but that it is not so in the case of nullity, for there the decree pronounces the marriage to have been “void” from the outset”.**

56. Granted the definition of a void marriage as quoted above, to be that such marriage is void *ab initio*, this translates into there having been no legally binding marriage entered into between the deceased and the respondent in 1992. In the event, the marriage did not end when the High Court declared it void on 28<sup>th</sup> February, 2020 as argued by the appellants. The cause of action could not therefore, have arisen from that date.

57. The deceased was entitled to bring an action to reverse the transfer of the property to the respondent from the date of the transfer itself, on the 22<sup>nd</sup> November, 2004. This is the date the factual situation arose, upon which the deceased could have reclaimed his property, on the grounds of mistake. **The Limitation Act, in subsection 4 (3)** states that:

**“No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it**

**first accrued to some person through whom he claims to that person**". (underlining for emphasis only)

58. We cannot fault the Court of Appeal when it found that the cause of action, on the particular facts relating to this appeal, accrued when the deceased transferred the property in question to the respondent, on 22<sup>nd</sup> November, 2004. This is the date that the cause of action accrued to the deceased and that time for bringing an action started to run.

59. As we stated in the case of **Baidala Levi Mwanza (Male) v Harrington Akomwa and Others**<sup>4</sup>, 'statute bar is a complete procedural defence to a claim on grounds that the time within which to seek redress through the courts of law has lapsed. It is not a defence on the merits to the claim.' In addressing the import of the statute of Limitations, **Blacks Law Dictionary** at pages 1450 to 1451 states that:

**"this is a law that bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)**

**The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh".**

60. We are satisfied that in terms of **subsection 4 (3) of the Limitation Act**, the deceased himself was not precluded from

pursuing the matter at any time during his lifetime on the basis that his marriage to the respondent was void. It is in that regard, worthy of note, that the two cohabited for about twenty (20) years from 1992 to 2012. The property was gifted ten years into their cohabitation in 2004. This was prior to the second stroke suffered by the deceased in 2006 that left him bedridden and dependent on the respondent.

61. As properly observed by the Court of Appeal, there is nothing on record to support the appellants contention that the deceased state of mind was questionable at the time he gifted the property to the respondent, in 2004.

62. In any event, the law also presumes the deceased to have known, at the time of contracting his purported marriage with the respondent, that he was already married to Thelma Elizabeth Chelemu. Pursuant to **section 166 of the Penal Code Cap. 87 of the laws of Zambia**, the deceased had, in fact, committed the criminal offence of bigamy. This offence is said to be committed when:

**166. "any person who having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for five years".**

63. Having determined that the action in Cause No. 2020/HP/0219 is statute barred, ground four of the appeal fails and grounds one, two and three are rendered otiose.

64. On the particular facts, we find the appropriate order on costs is that, costs of the appeal be borne by the respective parties.

Appeal dismissed.



---

**M. MUSONDA**  
**DEPUTY CHIEF JUSTICE**



---

**J. K. KABUKA**  
**SUPREME COURT JUDGE**



---

**N. K. MUTUNA**  
**SUPREME COURT JUDGE**