

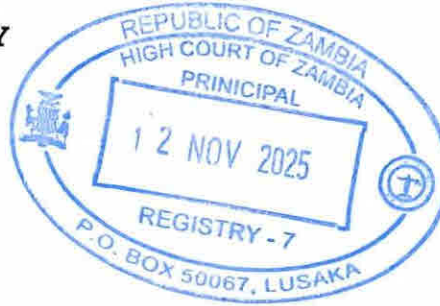
IN THE HIGH COURT FOR ZAMBIA

2019/HPF/0122

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



BETWEEN:

SURESH PATEL TEMBO

(Suing in her capacity as beneficiary of the estate of the late Mr. Nagin Patel)

PLAINTIFF

AND

KAMILISH PATEL

(Sued in his capacity as Administrator and beneficiary of the estate of the late Mr. Nagin Patel)

1ST DEFENDANT

BHAVESH PATEL

(Sued in his capacity as Co-Administrator and beneficiary of the estate of the late Mr. Nagin Patel)

2ND DEFENDANT

Before the Honourable Mrs Justice Ruth Chibbabbuka on the 12th day of November, 2025

For the Plaintiff: Mrs I. Mwale Nyirenda, Messrs Kangombe & Associates

For the Defendants: Mr S. Bwalya Jnr, Messrs Solly Patel Hamir & Lawrence

JUDGMENT

Cases referred to:

1. *Josephat Chasaya Vs Aatur Rahaman Chodury, Appeal No. 78 of 2017*
2. *Finance Bank Zambia Limited and Rajan Mahtani Vs Simataa Simataa Appeal No. 11 of 2017*
3. *Sylvester Musonda Shipolo Vs Shadreck Maipamber Appeal No. 1 of 2016*
4. *Grace Banda Vs Judith Mwanza and Moses Banda, Appeal No. 188 of [2024] ZMCA 315*

5. *Fanwell Soko Vs The People Appeal No. 217 of 2014.*
6. *Clement Simuyembe Vs ZESCO Appeal No. 10 of 2016.*
7. *Brenda Muzyamba Vs Martha Muzyamba Sinabbomba and 21 others Appeal No. 11 of 2019*
8. *Hakainde Hichilema and other Vs The Government of the Republic of Zambia Appeal No.28/2017*
9. *Brenda Muzyamba Vs Martha Muzyamba Sinabbomba and 21 others*

Legislation referred to:

Other works referred to:

Black's Law Dictionary, Ninth Edition, Bryan A. Garner, 2009, Thomas Reuters

1. Introduction

1.1 By a Writ of Summons issued on the 27th May, 2019 the plaintiff claimed the following reliefs:

1. For a declaration that the plaintiff is a beneficiary to the Estate of the late Naginbhai Jagubhai Patel.
2. For an Order that the defendants produce a full inventory of the estate of the late Mr Naginbhai Jagubhai Patel.
3. For an Order that the defendants render to the court an account of the administration of the late Mr Naginbhai Jagubhai Patel.
4. For an Order directing the defendants to give the plaintiff as a beneficiary her rightful share of the estate of the late Mr. Naginbhai Jagubhai Patel.
5. Costs of and incidental to these proceedings; and
6. Any other relief the Court may deem fit.

2. The statement of claim

2.1 In her statement of claim, the plaintiff states as follows: The plaintiff is the daughter of the late Mr Naginbhai Jagubhai Patel and Regina Zulu born on

26th February, 1992 in Luanshya District in the Copperbelt Province of the Republic of Zambia and was named by the late Mr. Naginbhai Jagubhai Patel. The defendants are the plaintiff's half brothers. The 1st defendant is the administrator of the estate of the late Mr Naginbhai Jagubhai Patel who passed on without leaving a will on the 13th March, 2006 in Ndola District of the Copperbelt Province of the Republic of Zambia. The plaintiff's mother passed away in 2008 in Luanshya District of the Copperbelt Province of the Republic of Zambia. Before the demise of the plaintiff's father, the plaintiff was being supported financially and materially by the above, mentioned deceased father.

2.2 Upon his death the late Mr Naginbhai Jagubhai Patel left the following properties:

- (i) A house in Ndola, Itawa area
- (ii) Several houses in Lusaka and farms
- (iii) A garage in Ndola
- (iv) A big garage in Lusaka's Makeni area
- (vi) Several vehicles
- (vii) Several shops in Ndola etc

At his death the plaintiff's father left a company called Kodiya Transport Limited. Kodiya Transport Limited had its assets transferred to a company now operating as KB Trucking Limited and now this company has over 82 trucks operating in and out of Zambia.

2.3 The 1st and 2nd defendants have been administering the estate of the plaintiff's late father. The plaintiff's father was sponsoring her education at Luanshya Girls Secondary school and upon her father's death, the plaintiff dropped out of school. Before dropping out of school, the plaintiff engaged her two half-brothers, the 1st and 2nd defendants so that they

could use the proceeds of the business left by the plaintiff's father to sponsor her education, but they both refused. In trying to get further assistance, the plaintiff engaged her uncle, her father's elder brother, who in turn engaged the defendants but to no avail. The plaintiff was advised by the defendants to find a house in Lusaka which they would buy for her, but that when she carried out the instruction and found a house, they refused to buy it for her. The plaintiff reported the matter to the victim support unit, under the Zambia police, but the defendants failed to heed the advice given to them. From the time the plaintiff's father and mother passed away, she has had no proper place to live in and she has found it difficult to support herself or even do business due to lack of funds.

- 2.4** While the plaintiff has been suffering, the defendants have been amassing wealth using the father's properties and they have no concern with her well-being. The defendants sold the house in Ndola without leave of court for the purpose of defeating justice. Every time that the plaintiff made a request about being given her share of the estate, the defendants always refused, alleging that they do not know her. The plaintiff's uncle who resides in Lusaka always advised the defendants that the plaintiff is their sister and that they should give the plaintiff her share of the father's estate but to no avail. The defendants have been refusing to acknowledge her as their sister, because they feel ashamed and embarrassed that she was born outside wedlock as it is a fact that the defendants have known the plaintiff since childhood. It was not the plaintiff's choice that she be born outside wedlock and this does not mean that she is not a beneficiary of the estate of her late father Mr Patel. The defendants have continued to refuse to give the plaintiff a share of her late father's estate, while they have been using the properties of the estate to accumulate wealth for themselves and their families.

3. The defence

- 3.1** The defendants filed their defence on the 6th June, 2019 where they state that, the plaintiff is not the biological daughter of the late Naginbhai Jagubhai Patel as alleged. The defendants deny that they are the plaintiff's half-brothers. Following the demise of the late Naginbhai Jagubhai Patel, the 1st defendant was appointed Administrator of the estate which comprised of personal effects such as clothing, shoes, wrist-watch, phone and household goods which he jointly owned with his spouse, the defendant's biological mother. The 1st defendant ceased to be the Administrator of the said estate after one year as there was basically no estate worth administering.
- 3.2** The late Naginbhai Jagubhai Patel did not leave a house in the Itawa area of Ndola upon his death, or several houses in Lusaka and farms, a garage in Ndola, a big garage in Lusaka Makeni's area, six trucks and trailers, all runners, several vehicles and several shops in Ndola as alleged by the plaintiff. The late Naginbhai Jagubhai Patel was a man of straw prior to his death and was totally dependent on the 1st defendant and his spouse for sustenance and as such had no capacity to own the properties as alleged by the plaintiff. The late Naginbhai Jagubhai Patel did not leave a company called Kodiya Transpot Limited at the time of his death. The deceased was neither Director nor a shareholder of Kodiya Transport Limited. The defendants also deny that the assets of Kodiya Transport Limited were transferred to a company operating as Time Trucking Transport Limited with a fleet of 82 trucks, operating in and out of Zambia as alleged. Rather, KB Trucking was incorporated in 2008 long after the demise of the late Naginbhai Jagubhai Patel.

- 3.3** The defendants have not been administering the estate of the late Naginbhai Jagubhai Patel as alleged, but admit that they refused to sponsor the plaintiff's education. The defendants deny that the business' which they are operating were left by the late Naginbhai Jagubhai Patel. The defendants have never been engaged by the elder brother to their late father, regarding the plaintiff's academic affairs. The defendants deny ever having advised the plaintiff to find a house to purchase. The defendants declined to appear at the Victim support unit on account that they do not recognise the plaintiff as their biological sister as she was never introduced as such by the deceased prior to his demise. The defendants do not know the plaintiff's father and they are not responsible for her welfare.
- 3.4** The wealth which the defendants have accumulated was not amassed from their late father's properties as alleged but rather generated by themselves. The defendants deny ever selling a house in Ndola for the purpose of defeating the ends of justice as alleged. The defendants never inherited any property from their father which they shared between themselves. Even assuming that their later father left property, the plaintiff would not have qualified to participate in the sharing of the property on account of not being their biological sister.
- 3.5** The defendants deny that their uncle who resides in Lusaka ever advised them that the plaintiff was their sister and to give the plaintiff her share of their late father's estate. The defendants are ready to accept the plaintiff as their sister provided that she avails conclusive evidence that she is their biological sister. The question whether the plaintiff is their biological sister is a very serious matter which cannot be resolved by the plaintiff simply laying a claim that the deceased was her biological father and their uncle based in Lusaka is not competent to decide whether or not the plaintiff is

their sister. The defendants deny that they have known the plaintiff since childhood.

3.6 The defendants sympathize with the plaintiff's predicament but re-state that the deceased did not leave any estate worth sharing and even assuming that he did, the plaintiff would not have qualified to participate in sharing of the same on account that she is not one of the biological children of the deceased. The defendants have never used any of the properties of the deceased's estate namely his personal effects such as clothing, shoes, wrist-watch, phone and household goods which he jointly owned with his spouse, the defendant's biological mother, to accumulate wealth for themselves and their families.

3.7 The defendants deny that the plaintiff is entitled to the reliefs sought and deny each and every allegation contained in the plaintiff's statement of claim.

4. The plaintiff's reply

4.1 In a reply filed on the 27th June, 2019 the plaintiff stated that it is not true that the plaintiff's father's estate comprised of nothing other than personal effects such as clothing, shoes, wrist-watch, phone and household goods. The defendants were trying to suppress information in the hope of ensuring that the plaintiff does not get a share of her father's estate. The plaintiff's late father was a business man and hence was financially sound and actually left the properties mentioned being a house in the Itawa area of Ndola upon his death, or several houses in Lusaka and farms, a garage in Ndola, a big garage in Lusaka Makeni's area, six trucks and trailers, all runners, several vehicles and several shops in Ndola. The late Mr Naginbhai Jagubhai Patel also had companies with employees and he left a company called Kodiya Transport Limited.

4.2 Her uncle, Mr Patel, knows about her existence and that she is the daughter of the deceased Mr. Naginbhai Jagubhai Patel. Since the 1st defendant has admitted that he is the only Administrator, he can still be made to account as to how he has been administering the estate of the plaintiff's late father. The defendants did actually offer to buy the plaintiff a house and phone recordings shall be produced to prove the same and the plaintiff adopts the affidavit in reply filed into court on the 20th May, 2019, in addition to this reply.

5. The hearing

5.1 The plaintiff's evidence

The plaintiff called five witnesses.

5.1.1 PW1 was the plaintiff who testified that she had brought her brothers, the defendants to court, so that they could help her get a share of the properties that their father left as her life is unstable. Her father Mr Nagin Patel died in 2006 in Ndola. The deceased used to visit her at the place where she used to live with her grandmother and she also used to visit him at his place. The deceased used to bring all the necessities that she needed. He did this from when she was two years old until he died. Her grandmother who is also late was Zelia Zulu. She died in 2010 in Luanshya. Her father used to visit them in Luanshya while he was staying in Ndola. When she was young, the late used bring items like surf, porridge and when she started going to school, he used to pay for her school fees until she reached grade nine. She was at Chifubu Secondary School.

5.1.2 She knew her first born brother when she was still young, his name is Kamlesh Patel, and he is the 1st defendant. Her uncle Ezwel Zulu took her to visit her father in Ndola where he used to work in the industrial area.

At that time, she was six years old. They found that her father and Mr Kamlesh were not there so they decided to wait for them as her uncle had no transport money. They were informed that her father had a breakdown and Mr Kamlesh arrived with a black friend. Mr Kamlesh asked her uncle what he wanted and replied that her father had not been to provide support for her for about a month. She slept at her father's workshop in the guard house with the guard's wife while her uncle slept outside with the guard and helped to guard the premises. Her father had a transport business and had trucks. He used to stay in Itawa, along Challo Chesu road.

5.1.3 The time she qualified to grade eight, her father took her to stay with an uncle by the name of Daniel Banda who was a cousin to her mother. Her father told his worker, Andrew Tembo to look for a place for her at Chifubu Secondary School. Andrew Tembo lives in Ndola and works at a company called Time Trucking. She started going to school at Chifubu Secondary in 2004. Her father paid her school fees and bought her uniforms and everything that she needed. This was up to the time he died in 2006.

5.1.4 The owners of Time Trucking are cousins with Mr Kamlesh Patel. Mr Andrew Tembo joined Time Trucking after her father died. After writing her grade nine exams, she went to Luanshya and stayed there for two months. She then went to Ndola to see her Dad at the workshop and was informed by some people who she only knew facially that her father had been bashed in the garage. She returned to Luanshya. Her mother Regina Zulu died in 2007 while her grandmother Zelipa Zulu died in 2010. As she had no one to help her she returned to Ndola in 2013 and went to her father's garage and found that Mr Tembo no longer worked there. She was told that there were different people renting the building. She decided to go to Time Trucking where she found Mr Tembo who gave her the number

for her elder brother Mr Patel. She asked for transport money from her aunty Omelia Zulu who lived in Luanshya and she then travelled to Lusaka.

5.1.5 Upon arrival in Lusaka she was given directions to HM Trucking, by Mr Tembo. The owner of HM Trucking is Mr Morgan Patel. When she arrived at the gate of HM Trucking, she found a Mr Chisenga who still works for Mr Patel up to now and asked her if she was Nagin's child to which she said she was. When she asked him how he knew her, Mr Chisenga told her that he had seen her before as he used to take provisions for her. He allowed her to go inside and she met Mr Patel, who is her uncle. She introduced herself to Mr and Mrs Patel and explained to them how she had travelled. Mr Patel informed her to go and see Kamlesh and Bhavesh to inform them that she had arrived. The two defendants came and told Mr Patel to get a taxi and follow them to a certain place which looked like a lodge along Kafue Road. She first introduced herself to them and this was the first time that she was meeting Bhavesh Patel the 2nd defendant. The defendants told her that they were going to help her as at that time she wanted to go back to school in grade nine.

5.1.6 After her brothers said that they would help her, she went to stay with her aunty in Rhodespark. When she returned to the Copperbelt she was given K5,000.00 by the defendants. It was given to her at the Victim Support Unit at the Central Police station in Lusaka this was in 2014. It was given to her from there because she used to call her brothers but they would not pick up her calls and at times they would say they were not the ones who gave birth to her when she called them using Mr Chisenga's phone. She went back to see Mr Morgan Patel and explained what had happened so he advised her to go to the victim support unit where she was given K5,000.00.

5.1.7 Her father left six trucks that were in good condition, according to the information that she received from Mr Tembo when she was trying to trace her brothers. She was told about the six trucks, the workshop where her father was working from, the house in Itawa and the workshop where Mr Tembo works which is situated in Lusaka along Kafue Road. Mr Patel also mentioned that there were about three or four trucks, a house in Ndola and a workshop in Ndola where her father was working from, as well as a workshop in Lusaka which is now called K.B Trucking. At that time, it was just a plot. These properties are currently in the care of the defendants and she has not been given a share of these properties by the defendants. The Administrator is the 1st defendant. She was told by them that they do not have anything that her father left and she would like the Court to help her because her life is unstable.

5.1.8 She has nowhere to stay or to settle and she also has not continued with her education. All her family members have all died and her prayer is that this Court helps her in this case. When she got the K5,000.00 she paid for her school fees at Luanshya Girls Secondary and went into grade ten. However, she did not complete as the money was not enough. She used to commute from the farm which was very far so she stopped going to school in the said grade ten. This was in 2011.

5.2 Cross examination of PW1

5.2.1 In cross examination PW1 replied as follows: She did not know that the defendants had denied that she was the daughter of Naginbhai Jagubhai Patel. Although she had seen the defence with her lawyer, she could not recall very well what the defendants were disputing. She was born from home and as such she could not give a good answer about her birth record

as the ones who could do so were all dead. She did have an under five-card although currently she did not have it and the people that kept it for her were all dead. Apart from her birth certificate and her under five-card, the other thing that could determine who her parents were, is the DNA test, although she did not have the DNA test results before Court.

5.2.2 Naginbhai Jagubhai Patel, did pay her school fees at Chifubu Secondary School, although she had not been to the said Chifubu Secondary School to request for a copy of a receipt issued to Mr Patel. She did visit Mr Patel at his house although she did not find the defendants there. The evidence that she has that she has been to Mr Patel's house is that she knows the place, as she went there with her uncle, a cousin to her mother, who she used to live with when she was at Chifubu Secondary school. The said uncle is dead now. The first time she visited they found people at home who told them that her father was not around. The next time they visited they found him at the gate and he gave her uncle money for him to buy her a jersey which she needed. She was never introduced to the defendants as there were some reasons why.

5.2.3 She had not produced a title deed for the house in Ndola to prove that the same was left by Mr Patel. Neither had she produced any title deeds for the several houses and farms that she mentioned, as proof that Mr Patel owned the same. She also had not produced a title deed for the garage in Ndola or Makeni as proof that these two properties belonged to Mr Patel. She had not produced any registration numbers for the six trucks and their trailers or the several vehicles to prove that Mr Patel owned them. She also did not have any proof that the several shops in Ndola belonged to Mr Patel. Although she did not have any evidence from the bank by way of a bank statement to prove that Mr Patel was financially sound, she was able to testify to the same from what she used to see. She also did not have

any documents showing that the assets listed in her statement of claim were transferred to K.B Trucking Limited, neither did she have any documents to show that Mr Patel was a shareholder in Kodiya Transport Limited.

5.2.4 When she arrived at H.M Transport Limited in Lusaka she only knew Mr Chisenga who informed Mr Patel that she was the child that he was talking about. Mr Patel had heard about her but had never seen her until that day. Mr Patel is the elder brother that she described who was in Ndola. The people that know her story are her family who she was staying with who are all dead. Mr Chisenga used to work for her father. Mr Tembo also used to work for her father and he is now at Time Trucking and he is alive. She knew Mr Chisenga and Mr Tembo as they used to bring her support from her father. Mr Tembo was with her father when her father told them that he would not be managing to bring the support and that he would be sending Mr Tembo to bring the support. Her mother was not married to Mr Patel, they were just neighbours in Itawa, Ndola.

5.2.5 She went to the victim support to complain and used a call out to get the defendants there. She was given K5,000.00 at Central Police. The two defendants were called by Mr Patel when she was at H.M Transport though they did not enter the premises, instead they met at a Lodge. She told them that she had come to seek help. She did not introduce herself to them because they were informed on the phone that the daughter for Nagin had come. Mr Chisenga is the one who called them on phone. She heard one of the two defendants in the background stating that she should not trouble them as they were not the ones that gave birth to her.

5.3 Re-examination of PW1

5.3.1 In re-examination, PW1 clarified as follows: The time when her father died, she was young and could not have the documents to show that the properties she mentioned belonged to her father. She had not brought any under-five card because her grandmother was in possession of the same and she is now late. She testified that Mr Patel never introduced her to the defendants because there was a reason. The reason was that when her father had a break down at night, the following morning, Mr Patel came from where he had a break down and he was with Mr Kamlesh. Mr Kamlesh started beating her father and from that time she stopped visiting them and instead just used to go to the restaurant to call him.

5.4 The evidence of PW2

5.4.1 PW2 was Chisenga Kanchibiya Bwalya, 75 years of age and a Stores Manager at H.M Trucking who testified as follows. He worked for Indians and in particular Mr Patel who was in Court and had gone outside. He was working for Kodyia Transport in Ndola in 2000. He started work in 1974 at the same company which was known as Tata Transport. Mr Patel, the one who was in Court, owned the said Tata Transport. He worked until he left Ndola and came to Lusaka in 2000. He continued to work for the same Patel.

5.4.2 Whilst in Lusaka someone came looking for him at his workplace by the name of Suresh Patel and when he looked at her closely, he remembered her from the time he worked in Ndola as he had seen her at the garage when she was young. When she had come to the garage, she was not little, she had grown up. This was about seven years ago. She came to look for the family to her father at the garage. Mr Nagin was his boss in Ndola. He was transferred to work for Mr Morgan Patel's young brother, Mr Patel.

Morgan Patel is the eldest and Nagin Patel is the youngest and they would be found at the same garage in Ndola.

5.4.3 When he saw Suresh in Ndola, she used to come with her uncle to the garage. At the garage she would wait outside while the uncle would enter the garage. The uncle used to come and get money for the child from Nagin Patel. Nagin Patel was going out with the mother to Suresh who was black. He knew about the relationship through their movements when they would come to get money. He used to be sent to take money for mealie meal by Nagin Patel to the uncle to the young lady, the one who would come with Suresh. He did not know the uncle's name.

5.4.4 The owner of the garage was Morgan Patel and it was situated near Lever Brothers. Nagin Patel grew up mostly in India, the elder brother was the one that helped him by giving him a business to run. Since he had worked with the Patels for so many years, he was transferred to go and work with Nagin Patel, since Nagin was young. The business he was running was a filling station. This in 1975 or 1976. The filling station was along Kabwe Road, before the Ndeke turn off in Ndola. Eventually Nagin was given a Fuso truck by the family and he used to supply petrol. He does not know how the business grew as he had returned to Lusaka. At the time he left Ndola, there were three Fuso vehicles, which were tankers that carried 35,000 litres.

5.4.5 When he was working for Mr Nagin Patel, he was living in Sinya Compound and Mr Nagin Patel was living with his elder brother Mr Morgan Patel in Itawa. He does not know how they stayed together. Nagin Patel was being kept by Morgan Patel, later on he found his own place and started living by himself in the same neighbourhood. He knew that Nagin had shifted

because he used to work for Nagin Patel at his house. The family would know who owned the house where Mr Nagin Patel was staying.

5.4.6 In Lusaka when he saw Suresh at the gate of the garage in Makeni he took her to his boss. He told his boss Morgan Patel that the child had come and that is how they sat down with his boss.

5.5 Cross examination of PW2

5.5.1 In cross examination, PW2 replied as follows: he did not meet the following people in Ndola the plaintiff's grandmother, Zelia Zulu, who died in 2010; Ezwell Zulu the plaintiff's uncle who also died on an unknown date; Daniel Banda a cousin to the plaintiff's mother Regina Zulu the Plaintiff's uncle. He did not know Regina Zulu the mother to the plaintiff and it was the first time he was hearing her name. He had never met Regina Zulu, and neither had she been to the garage. He knew that there was a relationship between the plaintiff's mother and Mr Nagin because of the way they used to come and get the money.

5.5.2 The plaintiff's mother was black and the father was Indian so he could tell and see that the plaintiff was the child for Nagin. He did not just assume this as Mr Nagin told him that Suresh was his daughter. He did not tell this to the court earlier as he was just following the questions as he was being guided by counsel. He did not see any under five card showing that Suresh was the daughter of Nagin but he could say for certain that she is the daughter of Mr Nagin because Nagin told him so, although he did not see any documents.

5.5.3 He could confirm that Nagin and Morgan were living together in the house in Itawa and after Nagin Patel got married, he found his own place and moved out. He could not confirm in whose names these properties were,

as it was for the family to know as he was just an employee. He would not know whether the house in Ndola Itawa, was registered in Nagin's name. He also could not confirm whether the several houses and farms referred to by the plaintiff exist and, in whose names, they are registered. He could not confirm that the garage in Ndola was registered in the name of Nagin.

5.5.4 He could confirm that Nagin came from India and his elder brother, Morgan is the one that assisted him to start the business. Nagin did not leave a big garage in Makeni. The garage which is in Lusaka is being used by the defendants. By that time, he had already left the company. He would know whether or not there are several motor vehicles or shops that belonged to Nagin Patel as he left this company a long time ago and Morgan Patel would be the one to know. When he left Ndola there was a tanker Fusso, an open truck Fuso and a V Series. He would not know in whose names that these trucks were registered as he has not been to school.

5.6 Re-examination of PW2

5.6.1 In re-examination, PW2 clarified that Mr Morgan Patel is his boss now. At the time the garage opened in Lusaka, Nagin was already dead. The said garage is now being used by the defendants.

5.7 The evidence of PW3

5.7.1 PW3 was Morgan Baii Jagubhai Patel. He testified that they were four brothers in the family, T.J Patel, M.J Patel, that is, himself, Manila J Patel who follows him and then Nagin Patel who is late as he died in 2006. Nagin left two children at his death Kamlesh Patel and Bhavesh Patel. He does not know anything about Suresh Patel as he was just referred to her by Chisenga in 2014 in Lusaka, at his office in Makeni. Chisenga is his worker who started working for him in 1974 in Ndola. Chisenga gave him a

message that Suresh was looking for him at his office, so he called Kamlesh and handed over the message to him. At the time he was told about Suresh, he did not know anything about her being his brother's daughter.

5.7.2 Prior to his demise, Nagin was doing business in Ndola, while he was living in Lusaka. Nagin was a boozier, as he used to drink alcohol. He does not know what business Nagin was doing in Ndola. He did help a lot of people to start business in Zambia though he did not help his brother. Nagin came to Zambia because their father was in Zambia. He stayed together with Nagin in Itawa for about two to three months, then Nagin stayed with their father. As a family, they assisted him by living with him for about three months. He did not know where Nagin went to stay as he was not concerned about that. He did not know much about his brother, what he was doing, or how he was living after he left PW3's house. What Nagin did was up to him. He was a family member and when he left his house, Nagin was free to do what he liked. He was running a small business and whatever Nagin did, PW3 was not concerned about.

5.7.3 Nagin did get married in 1972 in India, then he came to Zambia. Nagin lived with him for three months, then he left and had his own accommodation although he did not know where this accommodation was. Nagin was staying somewhere opposite Kansenshi School, in Ndola. At the time of his death Nagin was working for Kodiya Transport in Ndola. Kamlesh Patel, his brother's son and his nephew, were running this business. This business collapsed in 2005 and was closed down. The garage in Ndola was his. The trucks all broke down, because the business collapsed and as such Nagin did not have any property at all as his children were small. Even though he did not know what his brother was doing to earn a living, he learnt about this by general talk in the family.

Nagin's wife was there, but she also died one month after his brother, Nagin's death. At that time the children were about ten and twelve years old. After Nagin died, Kamlesh and Bhavesh lived at his place in Itawa. Mr Hamlish Patel is one of his brothers. Hamlish Patel did not help the defendants in business, they made it themselves. He could not say anything about Kamlesh being ten or twelve years old at the time he was running the business but Kamlesh was the one running the business

5.8 Cross examination of PW3

5.8.1 In cross examination, PW3 testified that he first learnt about the plaintiff in 2014 through Mr Chisenga. He could confirm that his brother Nagin never told him that he had a daughter. He did not remember any property that Nagin left. Kamlesh was born in 1979 and running Kodiya Transport. In 2005 Kamlesh was around twenty-five years old. In their Indian community, it is common that children run business' as early as twenty, twenty-two, and twenty-five. He has a business partner who is eighteen years old. He said that Kamlesh was about ten years old because he was not able to calculate and he made a mistake.

5.8.2 He did not tell the plaintiff that her father left a shop in Ndola, three or four trucks, a house in Ndola and a workshop called K.B Trucking which at the time was a shop. He does not know anything about the plaintiff's allegations that he engaged the defendants to give the plaintiff the proceeds of her late father's estate as is stated at page 30, paragraphs 15 and 22 of the plaintiff's bundle of pleadings, as he does not know anything about his brother's property.

5.9 Re-examination of PW3

5.9.1 There was no re-examination of PW3.

5.10 The evidence of PW4

5.10.1 PW4 was Bishop Alberto Mwansa, a Marketing Manager at Time Trucking Limited and a Bishop at Grace Methodist Church. His testimony was that he knew the Patel family from as far back as 1986, when he worked as a General Manager for a company called Cacitex Zambia Limited which was the main exporter of sugar and cement in the Great Lakes region. He used to source transporters to move sugar from Mazabuka to Mpulungu Port and cement from Chilanga Cement factory or Ndola to Mpulungu. He engaged so many transporters to move these products in Mpulungu and Kodiya transport was one of the transporters engaged in Ndola. Kodiya was owned by Mr Nagin Patel, who was well known in Ndola as Kodiya. He engaged him as early as 1988 to late 2003. Kodiya had about ten to fifteen trucks. In Cacitex they had a policy to engage transporters to move their cargo on not less than ten trucks. So, the trucks they leased that time were between ten to fifteen.

5.10.2 Mr Nagin was one of his best friends in Ndola. Whenever he travelled to Ndola, Mr Nagin would receive him together with his late brother Micheal Chivuli. He was introduced to the workshop near the Trade Fair grounds. He went once to Nagin's house but this was at night, although he did not know whether he was renting it or it belonged to him. The house was located before the town centre although he could not remember in what township it was.

5.10.3 Mr Nagin mentioned to him that he had some children outside home, but he did not see these children. The only child he knew is the first born son called Kuchi Patel who was before the court. Kuchi used to come to his office frequently with the father at the time he was working at Cacitex Limited. After Nagin Patel died, in 2006, that is when he saw Suresh Patel

at Time Trucking Limited in Lusaka. The owner of Time Trucking is Umesh Patel, a cousin to the 1st and 2nd defendants. He was introduced to Suresh by Umesh, as one of the children for the late Uncle Nagin Patel.

5.10.4 When Mr Nagin Patel died, Umesh Patel arranged for his cousins to move from Ndola to stay in his house. Umesh helped his cousins to move the trucks that their father had left in Ndola to Lusaka which were between two to four trucks. To his knowledge that is how the defendants continued with the business that their father left, to now what is called KB Trucking Limited. He did not know exactly how many trucks that they have but they must be between thirty or so now.

5.10.5 When the two defendants differed with their cousin Umesh Patel, they went to look for a plot and they told him that they had a plot somewhere in Makeni. When Umesh introduced him to Suresh, the reception was good as the family has taken him to be their uncle. He was informed that Suresh is the daughter to the defendant's late father. The defendants respect him as an uncle and they are good to him. For the defendants to call him uncle and for God to have given them what they have, what he needs, is for them to sit down as a family and reconcile and stand by the truth.

5.11 Cross examination of PW4

5.11.1 In cross examination, PW4 replied that he has a form five certificate and a diploma in accounts and marketing. The properties referred to at page 4 of the plaintiff's bundle of pleadings in paragraph 7, were to his knowledge for Mr Nagin Patel who was at that time the Managing Director for Kodiya Transport. He did not have any documentary evidence to show that the said properties were registered in the name of Nagin Patel. He did not know in whose names the property was registered and he also was not aware of

any other property registered in the name of the late Nagin Patel in Ndola. He did not know in whose name the garage in Ndola was registered but Nagin just told him that that was his garage. He did not know of any shops in Ndola that were registered in Nagin's name. He could not confirm that the big garage in Makeni was registered in the name of Nagin Patel. He also did not know about the several vehicles, apart from the trucks.

5.11.2 Mr Nagin did tell him that he had children out of wedlock, although no record was shown to him. He believed what he was told, although he did not see any record. He knew Kuchi as the first born and he would dispute that he is the second born. He agreed that he made a mistake over the two but the one that he knows is the elder brother and this is the only statement where he has made a mistake which does not need correction. He was told that the mother to Suresh Patel Tembo is Zambian, so the name Tembo could have been the mother's name, although he did not know as he was hearing of the name Tembo in Court. Although the mother to Suresh is Regina Zulu, he did not know where the name Tembo came from or whether she was married. Suresh was introduced to him in the capacity of Mr Patel's daughter.

5.11.3 He did not know the number of trucks that belong to KB Trucking but he had been to their yard and saw them there. He knows that the trucks are registered in the name of K.B Trucking, but the directors are the two brothers because they told him. He did not have any evidence to show in whose names the trucks were registered. He would not know if some of these trucks were being leased from other transport companies. He did not know a company called Truckers Investments that came after Kodiya Company Limited and that after Truckers Investments there was KB Trucking event though he testified that the assets of Kodiya Transport Limited were transferred to KB Trucking by the defendants. When the

defendants differed with their cousin Umesh, they told him that they were forming a company but he did not know what the name of the company was as what they did in Lusaka was none of his business. He was unable to confirm that the assets of Kodiya Limited were transferred to K.B Trucking.

5.11.4 The plaintiff has never shown him a birth certificate bearing the names Nagin Patel, nor has she shown him any under five records or a national registration card bearing the name Suresh Patel. He has not ever been shown any school records from Chifubu showing that the father to Suresh was Patel. He has never spoken to the plaintiff's late mother Regina Zulu and he did not know her. He also has never seen any of the plaintiff's relatives in the process of reconciliation nor has he convened any meeting for both of the parents' relatives to come, as he has only done that for the Patels.

5.11.5 He did not recall getting a contract from Zambia Sugar Plc for Truckers Investments. He did not attend the funeral of Nagin Patel.

5.12 Re-examination

There was no clarification recorded in re-examination.

15.13 The evidence of PW5

15.13.1 PW5 was Felix Kadula Phiri, a mechanic at KB Trucking who testified that he joined KB Trucking in 2008. Prior to 2008 he was working for Truckers Investments from the year 2000. The owner of Truckers Investments was Kamlesh Patel. Before the year 2000, he used to survive through piece work in Ndola, which he started doing after he finished school at Chifubu Secondary school in 1994. He used to accompany his

uncle in a truck and he taught him. The owner of the trucks were Iveco and Mantruck Adratic.

15.13.2 He knew Nagin Patel as the father of Kamlesh Patel. He knew Nagin Patel in the year 2000 when he started working, who used to come once in a while to the workshop over the weekends. He did not know where Nagin Patel lived. The business for his boss was Truckers Investments in Ndola in the Industrial Area. He did not know the ownership of the property in the Industrial Area. He did not know anything about Kodiya Transport. He knew Mr Chisenga because he found him at the workshop as he would go there sometimes. Most of the time Mr Chisenga would be found at the section where the drivers and his friends were. He would come to Truckers Investments in the year 2000.

15.3.3 He knew that Nagin Patel died in a road accident at the workshop. The driver was trying to reverse the car and Nagin Patel was outside trying to give signals and that is how he was bashed. He did not know the driver's name as he was new, but the one who employed the new driver was Kamlesh Patel. When Nagin Patel was being buried, he was not there as he was delayed in Kasumbalesa. He did not know much about the property Nagin Patel left all he knew is that there were about two-man diesel trucks. When business slowed down, the trucks were moved to Lusaka to be used for business there and this was after the death of Nagin Patel. The two trucks were brought to Lusaka by Kamlesh Patel and they were used to transport sugar and at that time cement. The sugar was transported from Mazabuka to different places like Mpulungu and at times just within Lusaka. The trucks started developing problems and it was difficult to find spare part and that is how they were sold. He did not see anything after the said two trucks were sold.

15.3.4 In terms of the business, when the young brother came in 2008 that is when things started changing. They started working together and they bought two trucks as they continued working in the transport business. From the time that they moved with the two-man trucks from Ndola to date there have been 12 to 15 runners but he would not know how many non-runners there have been as he would have to count the same. Three of them were involved in an accident, one of which was involved in an accident quite recently and the other one was in an accident two months ago. There are about four mechanics and those that guard the premises. He would not know the exact number of drivers although they could be about twelve.

15.3.5 He did not know anything about Suresh Patel and he did not know Alberto Mwansa, although he knew him facially as he would go to the workshop from 2014 to 2015. He never saw Alberto Mwansa in Ndola and it was his first time to see him. Umesh is a cousin to Kamlesh Patel. He never worked with Umesh Patel when he came to Lusaka as they would just park the vehicles at the premises for Umesh. In the year 2000, he joined Truckers Investments and was employed by Kamlesh Patel and Nagin Patel. It was actually Nagin Patel that introduced him to Kamlesh Patel and handed him over to him as a driver. He was employed in Ndola in the Industrial Area and he found that there were two-man trucks. He worked for about 5 to 6 years then Kamlesh's father Nagin passed away in 2006. They continued working but shortly after his boss moved the business from Ndola to Lusaka but the business went down as it was slow.

15.3.6 When they moved from Ndola, they used to park the vehicles at Time Trucking and they used to operate from within the same space that they had been given to operate from as K.B Trucking. The owners of K.B Trucking are Kamlesh and Bhavesh, while the owner of Time Trucking is

Umesh Patel. The relationship between Kamlesh, Bhavesh and Umesh, is that they are cousins. From the time they moved from Ndola to Lusaka the business had purchased approximately 13 to 15 trucks which included non-runners and runners. Currently they operate from different places as they do not have a fixed business place. The garage is in Makeni.

15.4 Cross examination of PW5

15.4.1 In cross examination, PW5 responded that he knew Nagin Patel as the father to his boss and Mr Kamlesh Patel is the one that owned Truckers Investments. He did not know what Mr Nagin Patel used to do when he would come to the workshop once in a while as he was working for Truckers Investments a company run by Kamlesh Patel and not Nagin Patel. The two-man trucks that he found at Truckers Investments at the time that Nagin Patel died were registered under Truckers Investments. He did not know anything about Kodiya Transport Limited.

15.4.2 He came to Lusaka with his boss and was working to Truckers Investments. The two trucks that were moved to Lusaka could no longer work and were sold under Truckers Investments and later on his boss Kamlesh was joined by his brother Bhavesh Patel who before this was working in South Africa. Bhavesh Patel invested in his brother's business and contributed greatly to it and they formed a company called K.B Trucking. He would not know if the trucks of Kodiya Transport were transferred to K.B Trucking as at the time he joined he found that it was just Truckers Investments. He would not be able to tell the Court about the assets that Nagin Patel left at the time of his death as he knew nothing. He also could not tell the Court anything about the relationship between Suresh Patel and Nagin Patel.

15.5 Re-examination of PW5

15.5.1 In re-examination PW5 clarified that Kamlesh was joined by Bhavesh who previously was in South Africa doing business.

That was the case for the plaintiff.

16.1 The defendant's case

The defendants called two witnesses.

16.1.1 The evidence of DW1

DW1 was Bhavesh Nagin Patel who testified that he was sued as an Administrator of his father's estate, Nagin Jagubhai Patel who died on the 13th March, 2006. He was appointed as an Administrator in 2007. To the best of his knowledge and recollection, his father had two children, Kamlesh Patel and Bhavesh Patel who are the defendants in this case. He came to know about the plaintiff in 2015 through his uncle's employee who told him about her. He has no relationship with the plaintiff and she has not produced any documents establishing the relationship between her and their father. To the best of his knowledge his father never financially supported the plaintiff.

16.1.2 At the time of his death, his father owned personal stuff like clothes and wrist watches which were distributed. His father did not own any houses in Ndola or Lusaka. His father also did not have any farms in Lusaka and neither did he own a garage in Ndola or Lusaka. To the best of his knowledge his father did not have any truck and trailer or any vehicle. He did not know how his father was related to Kodiya Tansport and had no idea over the same. He also did not know the directors in this company. The directors of K.B Trucking are Kamlesh Patel and Bhavesh Patel. K.B

Trucking was incorporated in 2008 and there is no connection between K.B Trucking and Kodiya Transport.

16.2 Cross examination of DW1

16.2.1 In cross examination DW1 responded that he came to know about the plaintiff in 2015 from his uncle's employee who told him that there was a lady who wanted to see him, but he did not tell him about her. He is sure that he has no relationship with the plaintiff and he has not been supporting or sponsoring her. There was no relationship between his father and the plaintiff although he could not say how he knew that as this was to the best of his knowledge.

16.2.2 When the plaintiff introduced herself to him, she told him that she is the daughter to his father although he did not acknowledge her as the daughter to his father. He told the plaintiff that she was never introduced to him by his father and that he would like some documentation as proof to that effect and she did not produce any such proof. He told the plaintiff to produce the proof and then they could meet, but she was not able to produce any proof. She never produced any proof like a birth record, or certificate and so they never met.

16.2.3 He did not ask her for a DNA test as that was for the plaintiff to decide. He would not know how old the plaintiff was when she introduced herself to him. He did not ask the plaintiff to do a DNA test but asked her to bring the proof. He did not ask her any further questions as it was for her to produce any documents as proof and not for him to go to any further extent as he was waiting for her to produce proof. He did not do anything to rebut the presumption that the plaintiff was his father's child as he has a family business to run and she had the onus to prove.

16.2.4 He did not accept the presumption that the plaintiff was his father's child and she was not his daughter for him to insist on a DNA test. He is sure that the plaintiff is not his father's daughter as he was never introduced to her as being his father's daughter not by his father or any relative. After the plaintiff introduced herself to him as his sister, he did ask his uncle Mangbhai Jagubhai Patel if this was true and if he knew anything about it, to which he said he did not know anything. He has been communicating with the plaintiff but in their communication, he has not addressed the plaintiff as his sister.

16.3 Re-examination of DW1

16.3.1 There was no re-examination of DW1

16.4 The evidence of DW2

16.4.1 DW2 was Kamlesh Nagin Patel who testified that he has been sued in his capacity as an Administrator of Nagin Patel and this matter was commenced in 2019. His father died on the 13th March, 2006 and he and his brother Bhavesh were appointed as Administrators in 2007. To the best of his knowledge, during the life of his father, he only had two biological children. He first came to know and meet the plaintiff in 2015. He does not have any relationship with the plaintiff and he does not know what relationship the plaintiff had with his father. He also did not know anything about his father mentioning anything about the plaintiff or supporting her materially.

16.4.2 At the time of his death, his father left personal belongings, shoes, trousers, shorts and t-shirts which they distributed. His father did not have any house in the Itawa area of Ndola and he also did not own any houses in Lusaka. His father did not own any garage in Ndola or in Makeni, Lusaka. His father also did not own any shops, trucks or several vehicles

at the time of his death. There was no proof of ownership that had been presented as proof of ownership of the assets listed in the plaintiff's statement of claim.

16.4.3 The directors of K.B Trucking are Kamlesh Patel and Bhavesh Patel and the company was incorporated in 2008, three years after their father's death. His father did not make any contribution to the establishment of K.B Trucking. Kодиya Transport has no relationship with K.B Trucking and there has never been a transfer of assets from Kодиya Transport to K.B Trucking and he did not know who owned Kодиya Transport.

16.5 Cross examination of DW2

16.5.1 In cross examination DW2 responded that he met the plaintiff in 2015. The plaintiff did take him to the victim support unit only once. He did not appear at the victim support unit as only his brother did and he did not know what the conclusion was at the victim support unit. He did not appear at the victim support unit because he was unwell. He did not recall seeing the plaintiff in 2013 and he did not recall handing over money to the plaintiff at any point.

16.6 Re-examination of DW2

There was no re-examination of DW2.

That was the case for the defendants.

17.1 Submissions

17.1.1 At the end of the trial the parties were given time to file submissions. To date the plaintiff has not filed submissions and only the defendant's filed submissions on the 23rd December, 2024.

17.2 The defendant's submissions

17.2.1 Counsel argued that the plaintiff was not entitled to a declaration that she is a beneficiary of the estate of the late Naginbhai Jabubhai Patel, on the basis that she is not a child of the deceased. That although the plaintiff alleged in paragraph 4 of her statement of claim, that she was a daughter to the deceased who named her when she was born on the 26th February, 1992, the record confirms that the plaintiff did not produce the necessary evidence at trial to support her allegation. That the plaintiff did admit during cross examination that she did not produce a DNA report or test results showing that she is a child of the deceased. Further that in fact, the plaintiff's witness who is a brother to the deceased, categorically denied having known that the plaintiff was the deceased's child. The plaintiff's conundrum was compounded by the fact that she conceded that she did not produce her birth certificate or her under-five card which could establish her relationship with the deceased.

17.2.2 It was counsel's further argument that the plaintiff failed to show at trial that the deceased supported her financially and materially before his demise, as she confirmed that she did not produce any evidence before the Court in the form of receipts for the payment by the deceased of her school fees. Counsel submitted that the plaintiff's allegations in her statement of claim must be supported by evidence for her to prove her case. Reliance was placed on the cases of **Josephat Chasaya Vs Aatur Rahaman Chodury**¹, **Finance Bank Zambia Limited and Rajan Mahtani Vs Simataa Simataa**² and **Sylvester Musonda Shipolo Vs Shadreck Maipamber**³.

17.2.3 To buttress the argument on, the Court was also referred to the case of **Grace Banda Vs Judith Mwanza and Moses Banda**⁴ where in determining

whether the applicant was entitled to be a beneficiary of the deceased's estate on the basis that she was his child, the Court of Appeal held that:

“In our view, evidence is required to conclusively prove that the child was sired by the deceased. No birth certificate was adduced. No evidence from the relatives of the knowledge of the non-marital child. When a DNA test was ordered by the Court the appellant applied to set aside the Order based on her reservations, without calling expert witnesses to verify his reservations. It is trite that a DNA test is the most conclusive evidence to determine paternity. Where there is uncertainty DNA testing is the best scientific evidence for the determination of paternity, though it is trite that other evidence than medical would be considered on the question of paternity. Where DNA testing is used, there is no need to resort to presumptions to determine paternity. Does the evidence in this matter give rise to presumption by the appellant. We hold that in the circumstances of the case, paternity was not proved on a balance of probabilities. We cannot fault the Court below in holding that the child in issue was not the deceased's and that the appellant is not entitled to the relief's sought.

17.2.4 It was argued further that the plaintiff had also failed to produce any evidence at trial to support her allegation that the deceased left the assets enumerated in paragraph 9 of her statement of claim. That in cross examination the plaintiff and her witnesses expressly conceded that no documentation establishing the existence and ownership of the subject assets was tendered before Court to substantiate the plaintiff's allegations. Additionally, counsel contended that both defendants testified that the deceased did not leave the alleged subject assets and or effects and these testimonies were unchallenged in cross examination. To buttress these

arguments, reliance was placed on the cases of **Fanwell Soko Vs The People**⁵, **Josephat Chasaya Vs Aatur Rahaman Chodhury**, and **Clement Simuyembe Vs ZESCO**⁶. Counsel argued further that even assuming that the plaintiff was a beneficiary of the estate of the deceased and that she managed to prove that the deceased left the subject assets upon his death, the plaintiff's action in so far as it relates to the personal estate of the deceased would be statute barred pursuant to *Section 20 of the Limitation Act, 1939* which provides that:

“Subject to the provisions of subsection (1) of the last foregoing section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due.”

17.2.5 Reference was also made to the case of **Brenda Muzyamba Vs Martha Muzyamba Sinabbomba and 21 others**⁷ where the Supreme Court had occasion to pronounce itself on the application of *Section 20* in respect of which Honourable Lady Justice RMC Kaoma stated that:

“We are also aware that by section 20 of the Limitation Act, 1939 personal representatives are subjected to the same restrictions in claiming the protection of the statute, which formerly applied to express trustees and now under section 19(1) and section 31(1), to all trustees. We are also alive to the fact that actions claiming personal estate are only barred after 12 years.”

On the basis of the foregoing counsel contended that the record will show that the deceased died on the 13th March, 2006 and therefore a period of 12 years had expired when the plaintiff commenced her action in 2019. Counsel argued that insofar as it relates to the personal estate of the deceased, it would have been statute barred, even assuming that she was a beneficiary of the deceased's estate. Counsel was of the considered view that in this regard the plaintiff's claims must fail with regard to an Order directing the defendants to give her a share of the estate of the deceased as a beneficiary of the same.

17.2.6 It was also argued that the plaintiff not having established that she was a child and beneficiary to the deceased's estate, she was therefore not entitled to an Order that the defendants produce a full inventory of the estate of the deceased. Additionally, counsel argued that in the same vein, the plaintiff was not entitled to an Order that the defendants render to the Court an account of the administration of the estate of the late Naginbhai Jagubhai Patel. For these arguments, reliance was placed on the case of **Grace Banda Vs Judith Mwanza and Moses Banda**.

17.2.7 On the basis of the foregoing arguments, counsel prayed that the plaintiff's cause of action be dismissed in its entirety with costs to the defendants to be taxed in default of agreement.

18.0 The decision of the Court

18.1 Findings of fact

I find the following as facts:

1. The deceased Naginbhai Jagubhai Patel died intestate on the 13th March, 2006.

2. The deceased had two sons Kamlesh Patel and Bhavesh Patel who were appointed as Administrators of the deceased's estate.

18.2 Facts in dispute

The following are the facts in dispute:

1. Whether the plaintiff is a child of the deceased.
2. Whether the plaintiff is a beneficiary of the estate of the deceased.
3. The assets that the deceased left in his estate.

18.3 Whether the plaintiff is a child of the deceased

18.3.1 The plaintiff in her statement of claim and evidence in chief states that she is the daughter of the late Naginbhai Jagubhai Patel and that the defendants are her half-brothers. The defendants in their defence and in evidence in chief deny that the plaintiff is the biological daughter of their late father or that they are the plaintiff's half-brothers. The plaintiff did not claim for an order for a DNA test in her statement of claim and nor was this Court moved by way of a formal interlocutory application for a DNA test. This was in spite of the plaintiff stating in cross examination that she was not aware that the defendants had denied that Naginbhai Jagubhai Patel was her father. The Supreme Court in the case of **Hakainde Hichilema and others Vs The Government of the Republic of Zambia**⁸ *"we can safely conclude, from these authorities, that both Zambian and Indian Supreme Courts will not allow trial courts to grant reliefs beyond what has been prayed for. A trial court therefore, has no jurisdiction to volunteer a relief which an applicant or a plaintiff has not prayed for"*.

18.3.2 That being said, in our jurisdiction there are two ways to determine paternity. The most conclusive approach is to take a DNA test. In the case of **Grace Banda Vs Judith Mwanza and Another** the Court of Appeal stated that:

“It is trite that a DNA test is the most conclusive evidence to determine paternity. The onus lies on the appellant to prove paternity of the deceased. Where there is uncertainty, DNA testing is the best scientific evidence for determining paternity, though it is trite that other evidence than medical would be considered on the question of paternity. Where DNA testing is used, there is no need to resort to presumptions to determine paternity.”

With the foregoing guidance of the Supreme Court and Court of Appeal, and in the absence of medical evidence by way of a DNA test, this Court will assess the evidence on record to determine the question of paternity legally as the law provides for a presumption of paternity, depending on the nature of evidence that is adduced before Court.

18.3.3 Black’s Law Dictionary, defines presumption of paternity as follows:

“The presumption that the father of a child is the man who
(1) is married to the child’s mother when the child was conceived or born (even though the marriage may have been invalid);
(2) married the mother after the child’s birth and agreed either to have his name on the birth certificate or to support the child, or
(3) welcomed the child into his home and later held out the child as his own.

18.3.4 In assessing the plaintiff’s evidence, she testified in cross examination and re-examination that she did not have a birth record as she was born from home. That she did have an under-five card though not in Court, as her grandmother who had kept it was now dead. She also testified that although Naginbhai Jagubhai Patel used to pay her school fees at Chifubu Secondary School, she did not obtain copies of receipts from the

said school. The plaintiff also testified that though she visited the deceased's home, with her uncle, a cousin to her mother, she never found the defendants there and that she could not be introduced to them as on one occasion the 1st defendant beat up the deceased when they met her. On the totality of the plaintiff's evidence adduced, it is apparent that the same is insufficient to support her claims that she is a daughter to the deceased and that the defendants are her half-brothers. This is because there is no evidence to substantiate her claims to this effect which this court can place reliance on.

18.3.5 With regard to the plaintiff's other witnesses PW2 he testified that the plaintiff used to come with her uncle to the garage as the uncle would collect money for the child from the deceased as the deceased was going out with the mother to the plaintiff. That he also used to be sent by the deceased to take money for mealie meal to the uncle to the plaintiff, although he did not know the uncle's name. The deceased did tell him that the plaintiff was his daughter. PW4 also testified that the deceased did tell him that he had children out of wedlock and that he was introduced to the plaintiff by Umesh Patel, a cousin to the defendants. In assessing the evidence of these two witnesses, the same is lacking in strength as none of them knew the name of the plaintiff's mother or the uncle who they testified used to come to the garage to collect money and where PW2 would take mealie meal. I find this strange as if their testimonies are to be taken to be credible, in the very least they should have been able to recall the name of the uncle who they claim to have seen and interacted with. Additionally in the absence of the deceased, effort should have been made to call Umesh Patel as a witness who is a relative to the deceased to corroborate the evidence of PW4. Due to the nature of evidence adduced by the plaintiff and her witnesses', I find that

the same is insufficient to support the claim of paternity as alleged by the plaintiff.

18.4 Whether the plaintiff is a beneficiary of the estate of the deceased

18.4.1 Having found that there is insufficient evidence to support the claim that the plaintiff is a child of the deceased, it follows that the plaintiff cannot be said to be a beneficiary of the estate of the deceased. Additionally, counsel for the defendants in their submissions, argued that the plaintiff's action in so far as it relates to the personal estate of the deceased is statute barred, as *Section 20* of the *Limitation Act, 1939* provides that:

“Subject to the provisions of subsection (1) of the last foregoing section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due.”

Counsel argued further that this position was reaffirmed in the case of **Brenda Muzyamba Vs Martha Muzyamba Sinabbomba and 21 others**⁹ the Supreme Court stated that:

“We are also alive to the fact that actions claiming personal estate are barred after 12 years.”

18.4.2 It is not in dispute that the deceased died intestate on the 13th March, 2006 and this cause of action was commenced on the 27th May, 2019

which is thirteen years after the death of the deceased. Clearly in agreeing with counsel for the defendant's argument, the plaintiff's claim with regard to the estate of the deceased is statute barred. As such the plaintiff's claims under 1, 2, 3 and 4 of her statement of claim in this regard must also fail.

18.5 The assets that the deceased left in his estate

18.5.1 The plaintiff in her statement of claim stated that the deceased left the following assets:

- (i) A house in Ndola, Itawa area
- (ii) Several houses in Lusaka and farms
- (iii) A garage in Ndola
- (iv) A big garage in Lusaka's Makeni area
- (vi) Several vehicles
- (vii) Several shops in Ndola etc

That at his death the plaintiff's father left a company called Kodiya Transport Limited. Kodiya Transport Limited stated above had its assets transferred to a company now operating as KB Trucking Limited and now this company has over 82 trucks operating in and out of Zambia.

18.5.2 In assessing the plaintiff's evidence and that of her witnesses, the plaintiff herself did not provide any documentation to substantiate any of her claims that the deceased left a house in Ndola, several farms, a garage in Ndola, several vehicles and shops in Ndola. None of the plaintiff's witnesses testified that the deceased left such assets and there was no documentary proof adduced to support the said claims. Further in relation to Kodiya Transport, PW3, a brother to the deceased testified that the deceased and his son were working for Kodiya Transport in Ndola, but that the said business collapsed in 2005 and was closed down as all the trucks broke down. PW3 went on to testify that at the time of his death the deceased

did not have any property. Although reference was made to Kodiya Transport by PW4 he was not able to tell this Court in whose name the trucks that were operating under Kodiya Transport were registered in and no documentary evidence was adduced to show the same. As such I find that there is no proof to substantiate the plaintiff's claims with regard to the assets that the deceased left as alleged.

18.5.3 The upshot of the matter is that on the totality of the evidence before Court the entire cause of action fails and the same is dismissed with costs to the defendants to be taxed in default of agreement.

Leave to appeal is granted.

Dated the..... day of 2025.

Ruth Chibbabbuka
REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
12 NOV 2025
R. CHIBBABBUKA, J
P.O. BOX 50067, LUSAKA
Ruth Chibbabbuka
HIGH COURT JUDGE