

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2024/HP/1199

BETWEEN:

HILDAH CHANDA KABWE PHIRI

AND

THE ATTORNEY GENERAL

ROBERTO DONATINI

MARY TEMBO

(Sued in her capacity as Administratrix of the Late Sande Tembo)

ESSAU CHULU

ARIDA CHULU

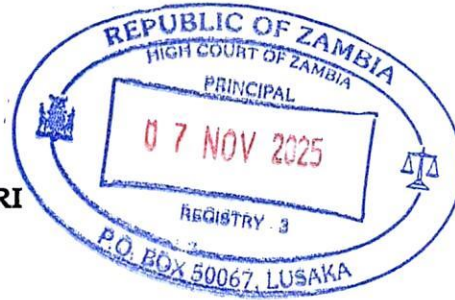
SAVVIDO DIMITRI

JUDITH KANKULI

RICKY MULENGA NKONDE

IAN THURAIRATNAM

KALAVATHY IYENGAR



APPLICANT

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

4TH DEFENDANT

5TH DEFENDANT

6TH DEFENDANT

7TH DEFENDANT

8TH DEFENDANT

INTENDED 9TH DEFENDANT

INTENDED 10TH DEFENDANT

Before the Honourable Lady Justice S. Chocho, in chambers on the 7th day of November, 2025.

For the Plaintiff:

Mr. CK Simukonda of Messrs Kangombe and Associates.

For the 1st Defendant:

Mrs. BM Kamuwanga (Acting Principal State Advocate)

Messers Attorney Generals Chambers.

For the 2nd, 4th & 5th Defendant: Mr. C Chungu of Messers Nsapato and Company

Advocates.

For the 3rd Defendant:

No Appearance.

For the 6th Defendant, 9th and

10th Intended Defendants:

Ms. A Njolomba of Messers Dickson Jere and Company.

For the 7th Defendant: Mrs NS Kampamba of Messers Boniface Ngalasa and Company.

For the 8th Defendant: Ms. C Kabwe and Mr. I Nonde of Messers Isaac and Partners.

R U L I N G

Cases referred to:

1. *William David Carlisle Wise V E.F. Hervey Limited (1985) Z.R.179.*
2. *Daniel Mwale v Njolomole Mtonga (sued as Administrator of the Estate of the Late Gabriel Siwanamutenje Kapuma Mtonga) v the Attorney General SCZ Appeal No. 4 of 2015.*
3. *Odlie Lukuombo Chelemu v Chana Chelemu CAZ Appeal No. 294 of 2021.*
4. *Mike Hamusonde Mweemba v Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (2006) ZR 101.*
5. *Bampi Aubrey Kapala and Joseph Busenga v The Attorney General CCZ No. 011&014 of 2021.*
6. *Zambia Seed Company Limited v West Co-op Haulage Limited and Western Province Co-operative Union Limited SCZ/8/114/2013.*
7. *Bwalya v the Attorney General and Another v Mwanamuto Investments Limited Appeal No. 41 of 2008.*
8. *Mpande Limestone Limited v Wadi Fanda Poultry Limited and Idriss Motala Appeal No. 002 of 2020.*
9. *Cropper v. Smith (1883) 26 Ch.D.*

Legislation referred to:

- 1. Order 14A of the Rules of the Supreme Court of England
(WhiteBook) 1999 Edition.**
- 2. Order 33 Rule 7 of the Rules of the Supreme Court of England
(WhiteBook) 1999 Edition.**
- 3. Order 5 Rule 1 of the High Court Rules, Chapter 27 of the laws of
Zambia.**
- 4. Order 18 of the High Court Rules, Chapter 27 of the Laws of
Zambia.**
- 5. Section 4(3) of the Limitation Act, 1939.**
- 6. Order 14 Rule 5 of the High Court Rules Chapter 27 of the Laws of
Zambia.**
- 7. Order 3 Rule 2 of the High Court Rule Chapter 27 of the laws of
Zambia.**
- 8. Order 20 of the Rules of the Supreme Court of England (WhiteBook)
1999 Edition.**
- 9. Section 23 of the Limitations Act, 1939.**
- 10. Section 24 of the Limitations Act, 1939.**
- 11. Explanatory Note 20/8/6 of the WhiteBook, 1999 Edition.**

1. INTRODUCTION

- 1.1. This is a composite Ruling in respect of the 7th Defendant's Notice of Motion to raise preliminary issues on a point of law Pursuant to **Order 14A of the Rules of the Supreme Court of England (WhiteBook) 1999 Edition** as read together with **Order 33 Rule 7 of the Rules of the Supreme Court of England (WhiteBook) 1999 Edition**; the 6th Defendant's application for non-joinder made pursuant to **Order 5 Rule 1 of the High Court Rules, Chapter 27 of the laws of Zambia**;
- 1.2. **Order 18 of the High Court Rules, Chapter 27 of the Laws of Zambia**; and the 1st Defendant's application for an Order for leave to amend Defence made pursuant to **Order 18 of the High Court Rules, Chapter 27 of the Laws of Zambia**.
- 1.3. The 7th Defendant's application is supported by an affidavit in support and a list of authorities and skeleton arguments dated July 24th, 2025.
- 1.4. The 6th Defendant's application is supported by an Affidavit in support and skeleton arguments dated May 14th, 2025.
- 1.5. The 1st Defendant's application is supported by an affidavit in support of Summons for an Order for leave to Amend the 1st Defendant's Defence and skeleton arguments dated July 12th, 2025.

2. BACKGROUND

- 2.1. The background to this matter as per pleadings and affidavit evidence presented before Court is that the Plaintiff commenced this action by way of Writ of Summons and Statement of Claim against the Defendant

on August 28th, 2024 which was subsequently amended on January 10th, 2025 claiming the following reliefs;

- i) A declaratory Order that the Plaintiff is the registered proprietor of ALL that piece of land in extent 3.3781 hectares more or less being Farm No. f/377a/37 situate in the Lusaka Province of Zambia which piece of land is more particularly delineated and described on Diagram No. 2739 of 2002;
- ii) A permanent Order restraining the Defendants, their servants, agents or whomsoever from interfering with and/or further developing any structures on Farm No. f/377a/37 situate in the Lusaka Province of Zambia which piece of land is more particularly delineated and described on diagram No. 2739 of 2002;
- iii) A mandatory Order directing the 1st Defendant to cancel all the certificates of title issued to the 2nd to 8th Defendants which certificates of title fall under Farm No. f/377a/37 situate in the Lusaka Province of the Republic of Zambia;
- iv) A demolition Order permitting the Plaintiff to demolish all buildings and structures built on ALL that piece of land in extent 3.3781 hectares more or less being Farm No. f/377a/37 situate in the Lusaka Province of Zambia which piece of land is more particularly delineated on Diagram No. 2739 of 2002;
- v) Any other relief the Court may deem fit; and

- vi) Costs of and incidental to these proceedings.
- 2.2. The 2nd, 4th and 5th Defendants entered appearance and filed a Defence on September 16th, 2024; which was later amended on November 11th, 2024.
 - 2.3. The 7th Defendant entered appearance and filed a Defence on September 19th, 2024.
 - 2.4. The 8th Defendant entered appearance and filed a Defence on November 21st, 2024.
 - 2.5. The 1st Defendant entered appearance and filed a Defence on November, 2024.
 - 2.6. The Plaintiff joined issue with the 1st, 2nd, 4th, 5th, 7th and 8th Defendants Defences and filed a reply on November 27th, 2024.
 - 2.7. The 7th Defendant filed an application for determination of a question of law on July 24th, 2025. The following issue was raised for determination:
 - i) Whether the Plaintiff can institute legal action against the 7th Defendant after 21 years since the claim arose.
 - 2.8. The 6th Defendant filed an application for non-joinder of party to proceedings on May 14th, 2025.
 - 2.9. The 1st Defendant filed an application for leave to amend the 1st Defendant's Defence on July 12th, 2025.
 - 2.10. The 7th, 6th and 1st Defendant's applications were heard on August 11th, 2025.

3. AFFIDAVIT EVIDENCE

DETERMINATION OF QUESTION OF LAW

- 3.1. The 7th Defendant filed an affidavit in support of Summons for determination of a question of law on July 24th, 2025 deposed by one Judith Kankuli who is the 7th Defendant herein.
- 3.2. The 7th Defendant avers that in the year 2020, she conducted a due diligence on the Subject Property and it was discovered that it was free of encumbrances and she proceeded to purchase Subdivision F/377a/59 from one Matholase Mukasikandi Phiri after finding that it was free from any encumbrances.
- 3.3. The 7th Defendant avers that she is the legal owner of Subdivision F/377a/59 holding a valid title.
- 3.4. The 7th Defendant further avers that the Plaintiff's right to Defend ownership accrued in the year 2003 when the Plaintiff's late husband acquired the property.
- 3.5. The 7th Defendant avers that the Plaintiff's action is statute barred as it has been 12 years since the right of action accrued.
- 3.6. In opposition, the Plaintiff filed an affidavit in opposition to affidavit in support of Summons for determination of a question of law dated July 31st, 2025 deposed by one Hildah Chanda Kabwe Phiri, who is the Plaintiff herein.
- 3.7. The Plaintiff avers that the purported purchase of the Subdivision was by mistake and the purchaser did not obtain good title.

- 3.8. The Plaintiff avers that the Ministry of Lands and Natural Resources wrote a letter in which it admitted that the subdivisions created from the main property in issue were created by mistake
- 3.9. The Plaintiff avers that the 7th Defendant cannot profit from a mistake which was admitted by the Ministry of Lands.
- 3.10. The Plaintiff further avers that the illegality of creating subdivisions was only discovered in the year 2013.
- 3.11. The Plaintiff avers that her cause of action has not been caught up by the limitation period.

NON-JOINDER APPLICATION

- 3.12. The 6th Defendant filed an affidavit in support of Summons for an Order for Non-Joinder of party to proceedings on May 14th, 2025 deposed by one Ian Thurairatnam who is the 9th Intended Defendant.
- 3.13. The 6th Defendant avers that the 9th Intended Defendant purchased Subdivision No. 57 of Farm No. 377a from the 6th Defendant.
- 3.14. The 6th Defendant avers that the 9th Intended Defendant before purchasing the land conducted a search at the Ministry of lands and it was discovered that the land was not encumbered.
- 3.15. The 6th Defendant avers that the 9th intended Defendant has title over the property in the names of the 9th and 10th Defendants therefore, the Orders the Court may make in this matter concern the 9th and 10th Intended Defendants.

- 3.16. In opposition, the Plaintiff filed an affidavit in opposition to the affidavit in support of Summons for an Order for non-joinder of party to action dated July 4th, 2025 deposited by one Hildah Chanda Kabwe who is the Plaintiff herein.
- 3.17. The Plaintiff avers that the Plaintiff commenced this action on August 28th, 2024 and the 9th and 10th Intended Defendants obtained title on September 17th, 2024.
- 3.18. The Plaintiff submits in light of the above that the 9th and 10th Intended Defendants have no cause of action against the Plaintiff but against the person who sold the property to them.
- 3.19. The Plaintiff avers that the sale and the conveying of the property by the 6th Defendant was done when the Plaintiff had already commenced Court process.
- 3.20. The Plaintiff further avers that the 9th and 10th Intended Defendants do not qualify to own land in Zambia and have not produced anything to show otherwise.
- 3.21. The 6th Defendant filed an affidavit in reply to the affidavit in opposition on July 14th, 2024 deposited by one Ian Thurairatnam.
- 3.22. The 6th Defendant avers that the transaction and further Deed of Assignment were done long before the Plaintiff commenced this matter.
- 3.23. The 6th Defendant avers that this is proper case for the 9th and 10th Defendant's to be joined to these proceeding as they are the owners of

Subdivision No. 57 of Farm No. 377a and they have title over the property.

AMENDMENT OF DEFENCE, LIST OF DOCUMENTS AND LIST OF WITNESSES APPLICATION.

- 3.24. The 1st Defendant filed an affidavit in support of Summons for an Order for leave to amend the 1st Defendant's Defence, list of documents and list of witnesses on July 14th, 2025 deposed by one Buumba Muleya-Kamuwanga.
- 3.25. The 1st Defendant avers that the 1st Defendant's intended Defence will help this Court resolve this matter.
- 3.26. The 1st Defendant avers that it is in the interests of justice that the said documents be amended to allow placing before this Court all that is relevant to the resolution of this matter.
- 3.27. In opposition, the Plaintiff filed an affidavit in opposition to the affidavit in support of Summons for an Order for leave to amend the 1st Defendant's Defence, list of documents and list of witnesses Deposited by one Hildah Chanda Kabwe who is the Plaintiff herein.
- 3.28. The Plaintiff avers that the intended amendments will prejudice the Plaintiff as the 1st Defendant intends to depart from the earlier made admissions.
- 3.29. The Plaintiff avers that the 1st Defendant also intends on raising issues relating to re-entry and this Court does not have the jurisdiction to hear and determine matters relating to re-entry but its is the Lands Tribunal.

- 3.30. The Plaintiff avers that the 1st Defendant has not shown this Court the defect and/or error it intends to cure by the application for leave to amend the Defence, list of documents and list of witnesses and that the provision of law relied upon in making the application does not confer this Court with the jurisdiction to amend the list of documents and list of witnesses.
- 3.31. The Plaintiff avers that the 1st Defendant has not demonstrated that the documents to be amended intend to eliminate all statements which may tend to prejudice, embarrass or delay the fair trial of the suit and that the 1st Defendant has failed to show that the amendments are for the purpose of determining the real question(s) of determination between the parties.
- 3.32. The Plaintiff avers that the application has been made after pleadings have closed which is an afterthought on the part of the 1st Defendant meant to prejudice the Plaintiff and redirect the course of justice.

4. THE LAW AND SUBMISSIONS

- 4.1. I have had occasion to review and consider the applications, having read the Parties affidavits, skeleton arguments and list of authorities. I must state that I will not reproduce the skeleton arguments in full as the same are on record suffice to state that I have read and considered the same.

DETERMINATION OF A QUESTION OF LAW

- 4.2. The 7th Defendant submits that this Court has the discretion to make a determination of the questions/points of law brought before it.
- 4.3. Placing reliance on **Section 4(3) of the of the Limitation Act**, the 7th Defendant submits that the Section raises a question of when the 12-year limitation begins to accrue and that a cause of action accrues when all essential elements required to establish that particular claim have come into existence.
- 4.4. the 7th Defendant further submits that a cause of action is disclosed when a factual situation is alleged which a party can attach liability to the other. Reliance is placed on the following cases which I have taken note of.
- **William David Carlisle Wise V E.F. Hervey Limited (1985) Z.R.179¹.**
 - **Daniel Mwale v Njolomole Mtonga (sued as Administrator of the Estate of the Late Gabriel Siwanamutenje Kapuma Mtonga) v the Attorney General SCZ Appeal No. 4 of 2015².**
- 4.5. The 7th Defendant further submits that the limitation period begins to run when there is a person who can sue and there is another who can be sued.
- 4.6. Placing reliance on the case of **Odlie Lukuombo Chelemu v Chana Chelemu CAZ Appeal No. 294 of 2021³**, the 7th Defendant submits the 7th Defendant's title has existed since the year 1997 and the

Plaintiff's land has existed since 1975 therefore, the year 1997 marks the start of the limitation period as this is when the cause of action accrued.

- 4.7. Further, the Defendant submits that it has been 27 years since the cause of action arose and the cause of action continued to accrue even when titles were passed from one person to another.
- 4.8. The 7th Defendant submits that the 7th Defendant is facing injustice of having to face a stale claim which she never expected to deal with and that the Plaintiff was aware of the Defendant's occupation but slept on her right to sue for a period of more than 12 years.
- 4.9. The Plaintiff filed a list of authorities and skeleton arguments in opposition on July 31st, 2025.
- 4.10. The first Plaintiff submits that the first Plaintiff's cause of action started running in the year 2013 when the Ministry of Lands made an acknowledgement that the Sub-divisions were created as a result of a mistake.

NON-JOINDER OF PARTIES APPLICATION

- 4.11. The 6TH Defendant filed a list of authorities and skeleton arguments in support of an application for non-joinder of parties on May 14th, 2025.
- 4.12. Placing reliance on **Order 14 Rule 5 of the High Court Rules Chapter 27 of the Laws of Zambia**, the 6th Defendant submits that the Zambian law allows any party who has demonstrated enough interest to join on-going legal proceedings at any stage of the proceeding providing the

intended party demonstrates to the Court that they have an interest or will be affected by the outcome of the proceedings.

4.13. The 6th Defendant submits that the 9th and 10th Defendants are in possession of the property which has a dwelling house and therefore, any Orders of this Court will affect the 9th and 10th Defendant therefore, they require to be heard. Reliance was placed on the case of **Mike Hamusonde Mweemba v Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (2006) ZR 101⁴** in which I have taken note of.

4.14. The 6th Defendant submits that it will be in the interests of justice for the 9th and 10th Intended Defendant's do be joined to these proceedings and avoid multiplicity of actions.

APPLICATION TO AMEND THE FIRST DEFENDANT'S DEFENCE, LIST OF DOCUMENTS AND LIST OF WITNESSES.

4.15. The 1st Defendant submits that **Order 3 Rule 2 of the High Court Rule Chapter 27 of the laws of Zambia** gives this Court the power to grant the 1st Defendant leave to amend it's Defence, list of documents and list of witnesses.

4.16. The 1st Defendant submits that **Order 18 of the High Court Rules Chapter 27 of the laws of Zambia** allows for amendments at any stage of the proceedings for purposes which include determining the controversy between the parties.

- 4.17. The 1st Defendant submits that granting the 1st Defendant's application will allow the matter to be heard on the merits and allow for determination of the real issues in controversy between the Parties.
- 4.18. The Plaintiff filed a list of authorities and skeleton arguments in opposition on July 11th, 2025.
- 4.19. The Plaintiff submits that the 1st Defendant's affidavit is patently irregular as it is deposed by Counsel who is not a party to the proceedings and therefore it ought to be expunged from the record and the application should be dismissed.
- 4.20. The Plaintiff submits that **Order 18 of the High Court Rules Chapter 27 of the Laws of Zambia** requires a party to prove that its Defence contains errors which it has to cure by the proposed amendments and that a perusal of the 1st Defendant's affidavit does not reveal the same.
- 4.21. The Plaintiff further submits that the proposed amendments which the 1st Defendant wants to make are not meant to eliminate statements which may prejudice, embarrass or delay the fair trial of the suit and that the proposed amendments will not serve the purpose of determining the existing suit, the real question or questions in controversy between the parties.
- 4.22. The Plaintiff submits that the proposed amendments introduce issues to do with re-entry and this Court does not have the jurisdiction to hear the same.

4.23. Placing reliance on the case of **Bampi Aubrey Kapala and Joseph Busenga v The Attorney General CCZ No. 011&014 of 2021**⁵ the Plaintiff submits that the first Defendant's application is an abuse of Court process.

4.24. The 7th Defendant filed a list of authorities and skeleton arguments in support of the 1st defendant's application on July 12th, 2025.

4.25. Placing reliance on **Order 18 of the High Court Rules Chapter 27 of the Laws of Zambia** and **Order 20 of the Rules of the Supreme Court of England (WhiteBook) 1999 Edition**, the 7th Defendant submits that a Judge may at any stage of proceedings, order any proceedings to be amended provided that the amendments are for the purpose of determining in the existing suit. The 7th Defendant has also placed reliance on the following cases, which I have taken note of:

- **Zambia Seed Company Limited v West Co-op Haulage Limited and Western Province Co-operative Union Limited SCZ/8/114/2013**⁶; and
- **Bwalya v the Attorney General and Another v Mwanamuto Investments Limited Appeal No. 41 of 2008**⁷.

4.26. The 7th Defendant submits in light of the above authorities that an amendment of pleadings can be made at any stage of the proceedings provided the amendment is relevant to the case at hand.

5. AT THE HEARING

- 5.1. Matter was scheduled and heard on August 11th, 2025.
- 5.2. The 7th Defendant submitted that she will entirely rely on the Summons, affidavit in support and list of authorities and skeleton arguments filed into Court on July 24th, 2025.
- 5.3. The 1st, 2nd, 4th, 5th, 6th, 7th and 8th Defendants did not object the 7th Defendants application.
- 5.4. The Plaintiff opposed the application and stated that that reliance will be placed on the affidavit in opposition filed on July 31st, 2025.
- 5.5. The Plaintiff further submitted that where there is an acknowledgement, the cause of action begins to run from the date of the acknowledgement and that the 1st Defendant acknowledged their mistake in a letter dated April 4th, 2013 and therefore, time begun to run in 2013.
- 5.6. The 6th Defendant submits that an application for non-joinder was filed on May 14th, 2025 accompanied by an affidavit in support and a list of authorities and skeleton arguments and that the 6th Defendant will rely on the document entirely.
- 5.7. The 1st, 2nd, 4th, 5th, 7th and 8th Defendants did not object the 6th Defendant's application.
- 5.8. The Plaintiff opposes the 6th Defendant's application for non-joinder and stated that she will rely on the affidavit in opposition, list of authorities and skeleton arguments filed into Court on July 4th, 2025.

- 5.9. The Plaintiff submits that the 6th Defendant has not demonstrated that there is a cause of action against the Plaintiff.
- 5.10. The Plaintiff submits that the 9th and 10th Intended Defendant's cause of action lies against the 6th Defendant who is the person who sold the property to them.
- 5.11. The 1st Defendant submits the 1st Defendant filed an application for leave to amend its Defence, list of documents and list of witnesses accompanied by an affidavit in support and a list of authorities and skeleton arguments dated July 2nd, 2025 and that they wish to rely on the same.
- 5.12. The 2nd, 4th, 5th 6th, and 7th Defendants did not object the 1st Defendants application.
- 5.13. The 7th Defendant supports that 1st Defendant's application and submits that in the interest of justice it would be crucial that the Courts allow the parties to bring facts relevant to the case to assist the Court make a fair determination and that an amendment will allow parties to amend their pleadings to respond to the 1st Defendant's amendments.
- 5.14. The Plaintiff opposed the 1st Defendant's application and relied on the affidavit in opposition and list of authorities and skeleton arguments filed into Court on July 11th, 2025.

6. COURTS DECISION

- 6.1. I have had occasion to review and consider the application, having heard Counsel for the Defendants and Plaintiff, read the affidavits, skeleton arguments and authorities cited by the parties for which I am grateful. I shall first the deal with the Application for determination of a question on a point of law as the same has a bearing on the other applications.
- 6.2. This Court does have the jurisdiction to dispose of cases on a point of Law pursuant to **Order 14A and 33 of the Rules of the Supreme Court of England** and the evidence on record reveals that the 7th Defendant has met the requirements to make an application under **Order 14A**. I shall therefore, proceed to determine the Preliminary Issues raised. The issue for determination is reproduced in 2.7 above.
- 6.3. Issues relating to a matter being statute barred speak to the Court's jurisdiction and go to the root of a matter. The Supreme Court in the case of **Daniel Mwale v Njolomole Mtonga (sued as Administrator of the Estate of the Late Gabriel Siwanamutenje Kapuma Mtonga) v the Attorney General SCZ Appeal No. 4 of 2015²**, held as follows:

“...The Statute of Limitation when raised, brings forth a serious legal question as to whether the court has jurisdiction to entertain the action before it, given that it was brought outside the limit period. It hardly bears repeating that the issue of jurisdiction is a threshold question and a lifeline for continuing any proceedings. Where a court holds the opinion that it has no jurisdiction, the very basis for continuation of

the proceedings before it - it must forthwith cease to deal with that matter. In our view, the issue of statutory bar when raised is as much about the jurisdiction of the court as it is a statutory defence for a party. It is a legal point touching on both the court's jurisdiction and a provision of a statute

6.4. It is trite law that a litigant is barred from the recovery of land after a period of 12 years has elapsed from the date the right of action first accrued. **The Limitation Act, 1939 in Section 4(3)** provides as follows:

“No action shall be brought by any 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”

6.5. In determining whether the Plaintiff's action is statute barred, the question to be answered is; when did the Plaintiff accrue the right of action. Put differently, when did time begin to run? The Supreme Court in the **Daniel Mwale²** case guided as follows:

“... time begins to run when there is a person who can sue and another to be sued, when all facts have happened which are material to be proved to entitle the Plaintiff succeed....”

6.6. The Plaintiff submits in her defence that the Ministry of Lands and Natural Resources in a letter dated April 4th, 2013 acknowledged that there was a mistake on their part and therefore the right of action was extended and therefore accrued on the date the acknowledgment was made.

6.7. **Section 23 of the Limitations Act, 1939** provides an exception to the general rule contained in **Section 4**, that is; were there is an acknowledgement or part payment, the right of action will accrue on the date the acknowledgement or part payment is made. **Section 23 (1)** provides as follows;

“(1) Where there has accrued any right of action (including a foreclosure action) to recover land or an advowson or any right of a mortgage of personal property to bring a foreclosure action in respect of the property, and –

- a) The person in possession of the land, benefice or personal property acknowledges the title of the person to whom the right of action has accrued; and*
- b) In the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether principal or interest;*

The right shall be deemed to have accrued on and not before the date of the acknowledgment or payment”.

6.8. Furthermore, **Section 24(1) of the Limitation of Act, 1939** requires that the acknowledgement must be in writing and signed by the person making the acknowledgement.

6.9. A perusal of the record reveals that there was an acknowledgement by the Commissioner of Lands in a letter dated April 4th, 2013 that a mistake was made by his office to the extent that the cancellation of re-entry in the year 2001 did not look into the sub-divisions created on F/377a/37.

6.10. For the foregoing, I am of the considered opinion that the acknowledgement meets the requirement contained in **Section 24(1) of the Limitation Act, 1939** and that the right of action accrued on April 4th, 2013. Further, that the Plaintiff did not commence her action outside the 12-year limitation period when she commenced the action on August 28th, 2024.

6.11. The 7th Defendant's application therefore fails, and I shall proceed to determine the 6th Defendant's application for non-joinder.

6.12. This Court has the jurisdiction to join parties to proceedings pursuant to **Order 14 Rule 5(1) of the High Court Rules, Chapter 27 of the Laws of Zambia**. **Order 14 Rule 5(1)** provides as follows:

“5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either Plaintiffs or Defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause”.

6.13. Furthermore, the Court in the case of **Mpande Limestone Limited v Wadi Fanda Poultry Limited and Idriss Motala Appeal No. 002 of 2020⁸** stated as follows:

“For a party to be joined to the proceedings, they must meet any of the three requirements being:

- 1. They must be persons who may be entitled to, or claim some share or interest in the subject matter of the suit, or who may be likely to be affected by the result.*
- 2. They are persons whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*
- 3. They are persons between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter”.*

6.14. On the strength of the above cited authorities, I am of the view that the 9th and 10th Defendant have an interest in the subject matter and are persons who are likely to be affected by the Orders/decision of this Court. I therefore, Order that one Ian Thurairatnam and Kalavathy Iyengar **BE** and are **HEREBY** joined to these proceedings as 9th and 10th Defendants respectively.

6.15. I shall now move to determine the 1st Defendant’s application to amend Defence, list of documents and list of witnesses. The Plaintiff raises

issue that the 1st Defendant's affidavit in support of the application is irregular as it is sworn by Counsel who is not a party to the proceedings and should therefore, be expunged from the record and application be dismissed in its entirety.

6.16. A perusal of the said affidavit dated July 12th, 2025 reveals that the affidavit deposed by the 1st Defendant's Counsel does not contain any contentious issues but only speaks to the fact that the 1st Defendant is in receipt of new/further instructions and the new instructions will assist the Court in resolving the matter. I am of the view that the 1st Defendant's affidavit is not irregular.

6.17. **Order 18 of the High Court Rules Chapter 27 of the Laws of Zambia** allows this Court make Orders for amendment. **Order 18** provides as follows:

“The Court or a Judge may, at any stage of the proceedings, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just”.

6.18. I am further guided by the **WhiteBook Explanatory Note 20/8/6** which provides as follows:

“The guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings”.

Explanatory Note 20/8/6 also makes reference to the English case of **Cropper v. Smith (1883) 26 Ch.D.**⁹ in which Bowen L.J stated as follows:

“It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right.”

6.19. I have considered the 1st Defendant’s proposed Amended Defence exhibited as **“BMK1”** and an I am of the view that the proposed amendments speak to the letter dated April 4th, 2013 in which the

Commissioner of Lands made an acknowledgment. The proposed amendments are amendments which will assist in determining the real issue in controversy. I therefore, find that, the 1st Defendant's application has merit and allow the same.

7. CONCLUSION

7.1. For the foregoing reasons, **I HEREBY ORDER** as follows:

- i) That the 7th Defendant's application fails;
- ii) That the 6th Defendant's application succeeds and one Ian Thuraiaratnam and Kalavathy Iyengar **BE** and are **HEREBY** joined to these proceedings as 9th and 10th Defendants respectively; and
- iii) That the 1st Defendant's Defence, list of documents and list of witnesses be amended within 10 days from the date of this Order.

7.2. I further Order that the other parties are at liberty to amend their pleadings in view of the 1st Defendant's amendments 14 days from the date the 1st Defendant files the documents.

7.3. Each Party to bear its own costs.

7.4. Matter stands adjourned to December 4th, 2025 at 08:45 Hours for Status Conference.

Delivered at Lusaka on the 7th day of November, 2025.



S. CHOCHO
HIGH COURT JUDGE

