

AZANIA MUPARARI
And
MOSES CHIBARO
And
HARUPERI (NEE MUPARARI) MUTOMBA
And
DZANISAI (NEE MUPARIARI) CHITANGA
And
FLINT MUPARARI
And
ANGELA MUPARARI

Versus

MUBARO DHLIWAYO
And
THE MASTER OF THE HIGH COURT (NO)
And
REGISTRAR OF DEEDS (NO)

IN THE HIGH COURT OF ZIMBABWE
NDUNA J
BULAWAYO 8 AND 9 APRIL 2025

Civil Trial

Mr G Ncube for the plaintiffs
Mr I Mupfiga with W T Daira and E Samubvu for the first defendant

NDUNA J:

The legal dispute in this matter centers on allegations of fraudulent administration of the estate of the late Jonah Chibaro who owned the property Mshawasha 14 in the District of Victoria. The plaintiffs, comprising six individuals Azania Muparari (1st plaintiff), Moses Chibaro (2nd plaintiff), Haruperi Mutomba (3rd plaintiff), Dzanisai Chitanga (4th plaintiff), Flint Muparari (5th plaintiff), and Angela Muparari (6th plaintiff and widow of Javen Chibaro) allege that the late Javen Chibaro, Jona Chibaro's eldest son, unlawfully transferred the farm to himself and later donated it to his son, Mubairo Dhliwayo (1st defendant), in violation of an oral will stated by Jonah

Chibaro. The defendants include Mubairo Dhliwayo, the Master of the High Court (2nd defendant), and the Registrar of Deeds (3rd defendant).

Factual Background

The plaintiffs allege that Jonah Chibaro, who died on 13 February 1985, owned Mshawasha 14 under Deed of Grant No. 1208/57. During his lifetime, he purportedly distributed undivided portions of the farm to his children in 1980 through an oral will witnessed by family members, consistent with Shona customary law. A family meeting in April 1985, attended by Javen Chibaro and other relatives, allegedly confirmed this distribution and appointed leaders to oversee the farm. However, the plaintiffs claim that Javen Chibaro secretly registered Jonah Chibaro's estate under DR 707/85 in 1988, securing Letters of Administration from the Master of the High Court. This allegedly allowed him to transfer the farm into his name Deed of Transfer No. 2642/88 and later donate it to Mubairo Dhliwayo in 2015 Deed of Transfer No. 5716/15. The plaintiffs assert that they only discovered these transactions in 2023 while attempting to register the estate under DRB 3577/21, prompting their legal challenge.

The plaintiffs allege that Javen Chibaro's actions constituted fraudulent and improper administration of the estate. They argue he disregarded the oral will, breached Shona customary law, and misled the Master of the High Court by failing to disclose the family's prior agreement on land distribution. They further contend that Javen Chibaro's fraudulent acquisition of the farm rendered subsequent transfers void, including the 2015 donation to Mubairo Dhliwayo, as he lacked legal authority to donate property acquired through deceit. The plaintiffs seek to set aside the Letters of Administration, cancel the disputed deeds, revive the original Deed of Grant No. 1208/57, and reconvene an edict meeting to appoint a lawful executor. They argue that Mshawasha 14 must be restored to Jona Chibaro's estate to honor his wishes and rectify the alleged fraud.

First defendant denies liability and raises four key defenses. First, he alleges non-compliance with procedural rules, arguing the plaintiffs' summons and declaration failed to specify the parties' residences or occupations as required by Rules 12 and 13 of the High Court Rules (2021), rendering the pleadings defective and invalid. Secondly, he asserts prescription, claiming the plaintiffs' cause of action arose in 1985 (when Jonah Chibaro died) or 1988 (when the estate was registered), but the summons filed in 2024 exceeded the three-year limitation period under the

Prescription Act [*Chapter 8:11*]. Thirdly, he alleges no cause of action exists against him, as the 2015 donation was a private *inter vivos* transfer unrelated to estate administration, and he played no role in Jonah Chibaro's estate. Finally, he argues supervening impossibility, stating that Javen Chibaro's death in 2020 makes it legally and practically impossible to reverse the donation, rendering the plaintiffs' claims moot.

In response, the plaintiffs reject the procedural objections, alleging that non-compliance with Rules 12 and 13 should be raised via exception, not a special plea, and does not justify dismissal absent proven prejudice. They argue prescription does not apply because the three-year period began in 2023 when they discovered the fraud, citing *Chirinda v Van der Merwe HH 51/13*, which holds that prescription runs from the discovery of concealed wrongdoing. They further allege that fraudulent acts, such as Javen Chibaro's void transfers, cannot confer legal rights, invoking *Folly Cornishe v Tapomwa SC 26/14*, where the Supreme Court ruled that transactions rooted in illegality are null *ab initio*. Regarding supervening impossibility, they contend courts routinely cancel fraudulent deeds regardless of time elapsed, asserting that Mubairo Dhliwayo's ownership remains contingent on his father's invalid title.

The parties on appearing before me agreed to lead the special plea of prescription through oral evidence and the following was testified.

Mubairo Dhliwayo

Mubairo Dhliwayo is the first defendant and is also the grandson of Jonah Chibaro and son of the late Javen Chibaro and that he framed his defense around the lawful transfer of the farm and the plaintiffs' delayed legal action. He testified that his grandfather, Jonah Chibaro, died in 1985, after which his father, Javen Chibaro, assumed ownership of Mshawasha 14 as the eldest son and customary heir. According to Mubairo, Javen formally registered the estate in 1988 and managed the farm until 2015, when he convened a family meeting to transfer ownership to Mubairo. He insisted the plaintiffs were present at this meeting or at least aware of the transfer, as the process was "widely publicised" and followed legal protocols.

First defendant dismissed the existence of an oral will allegedly made by Jonah Chibaro, stating he had "no knowledge" of such a will or any family agreement to distribute the farm among Jonah's

children. He argued that the plaintiffs' decision to challenge the transfers only after Javen's death in 2020 nearly four decades after Jona's passing demonstrated opportunism rather than genuine grievance. He emphasized that the plaintiffs had ample time to contest the estate's administration during Javen's lifetime but failed to act, rendering their claims prescribed under the Prescription Act [*Chapter 8:11*], which imposes a three-year limitation period.

Mubairo further contended that reversing the transfers was legally impossible due to Javen's death and shifts in inheritance laws. He noted that Zimbabwe's legal framework moved from customary "heirship" principles (favoring the eldest son) to equitable distribution laws post-1997, complicating any attempt to apply outdated norms retroactively.

Azania Muparari

Azania, Jonah Chibaro's surviving son and the family elder, presented a narrative of familial betrayal and concealed fraud. He testified that Jonah Chibaro orally bequeathed Mshawasha 14 to all his children during a family meeting in 1980 (or 1982, as inconsistently stated), demarcating portions of the farm for each child. This oral will, he claimed, was witnessed by family members and relatives, including Javen Chibaro. After Jonah's death in 1985, the family convened again and agreed to retain the farm under Jonah's name, appointing Javen as caretaker while deferring formal registration.

Azania alleged that Javen exploited this trust by secretly registering the estate in his own name in 1988, using strangers as witnesses, and transferring the farm to Mubairo in 2015 without the family's knowledge. He discovered the fraud in 2023 while attempting to formalize the estate under DRB 3577/21, only to find records showing Javen's and Mubairo's transfers. Azania maintained that the family had no reason to suspect Javen's actions earlier, as they relied on his integrity as the eldest sibling.

He rejected Mubairo's prescription defense, arguing that the three-year period began in 2023 when the fraud was discovered, not in 1985 or 1988. Citing Section 16(3) of the Prescription Act, he asserted that prescription tolls until a creditor becomes aware of the debt's existence. Azania also invoked customary law and Section 24 of the Wills Act, which preserves pre-1987 oral wills, to validate Jonah's bequest.

Azania admitted inconsistencies in his testimony, such as conflating the oral will's date 1980 vs. 1982 and omitting witnesses named in the pleadings. However, he attributed these discrepancies to the informal nature of the oral will and the passage of time, stressing that the core claim fraudulent transfers remained unchallenged.

ISSUE FOR DETERMINATION

The sole issue for determination is whether the Plaintiffs claim has prescribed as raised in the special plea.

Application of the Law to facts

The plaintiffs claim they only discovered in 2023 that the farm known as Mshawasha 14 had been transferred by their brother, Javen Chibharo, into his own name in 1988, and later donated to his son, the first defendant, Mubairo Dhliwayo, in 2015. The plaintiffs allege that these transfers were carried out fraudulently and without their knowledge, in breach of Shona customary law and the oral will allegedly declared by their father, the late Jonah Chibharo.

Under the Prescription Act [*Chapter 8:11*], the standard prescriptive period for most civil claims is three years, as per section 15(d):

“Subject to the provisions of section sixteen, the period of prescription of debts shall be—
... (d) three years, in respect of any other debt.”

However, section 16(3) provides an important exception:

“A debt shall not be deemed to be due until the creditor becomes aware of the identity of the debtor and of the facts from which the debt arises...”

The oral evidence presented at trial tells a different story. The first plaintiff, Azania Muparari, conceded that firstly he was aware of his father's death in 1985 and participated in funeral rites and post-burial family meetings. Secondly, he never sought to inquire into the status of the farm for over three decades, even after the 1988 transfer and 2015 donation. Lastly, he only sought to register the estate in 2021, after Javen's death in 2020.

These admissions contradict the plaintiffs' assertion of ignorance and show, instead, a longstanding willful blindness or acquiescence. The equitable doctrine of laches also bars relief, in the case of *Parish v King* 1992 (1) ZLR 216 (S) it was held as follows:

“It is not equitable for a plaintiff to delay ... and then seek to benefit from the fact that the value of the disputed property has been considerably enhanced by the passage of time”.

The principles of equity demand that a litigant “sleeping on his rights” with prolonged inaction cannot later revive stale claims to the detriment of others. The plaintiffs' silence and inaction from 1985 to 2021 despite knowledge of Javen's sole occupation of the land and purported control negate any claim that they only became aware in 2023.

In *Van Brooker v Mudhanda & Another* SC 5/2018, the Supreme Court articulated the burden of proof and procedural flow in special pleas of prescription. At page 12, the Court held that,

“a plea of prescription the *onus* is on the defendant to show that the claim is prescribed but if in reply to the plea the plaintiff alleges that prescription was interrupted or waived, the *onus* would be on the plaintiff to show that it was so interrupted or waived ”.

In this case, that standard is not met. On the contrary, the plaintiffs' own testimony and circumstances suggest they either knew or should have known about the disputed estate registration and transfers as far back as 1988.

In *Yusuf v Banley & Ors* 1964 (4) SA 117 wherein it was stated:

“The point therefore arises whether the onus lies on the defendants to establish the special plea, viz, that the facts are such as to entitle them to a dismissal of the action because the claim has become prescribed or whether the onus lies on the plaintiff to establish the allegations contained in the allegations to the special plea. The onus then being on the plaintiff to satisfy the court in terms of his replication to the special plea that his claim had not become prescribed before service of summons and as the only evidence in this regard is that of the plaintiff himself for consideration as to whether that onus had been discharged cannot be divorced from an assessment of his credibility as a witness”.

The plaintiffs were not incapacitated, misled, or obstructed from acting, they were present in Zimbabwe. Their reliance on Javen as a family head does not absolve them of the duty to inquire

or act with due diligence. The evidence led by the plaintiff on the oral will involves people who have now deceased leaving the court in a quandary as this cannot be verified.

Moreover before the 1997 Deceased Estates Succession Act [*Chapter 6:02*] the Administration of Estates Act [*Chapter 6:01*]. Specifically, Section 68 of this Act outlined that for estates under customary law, the estate would be administered according to customary practices. This often meant that the deceased's eldest son would inherit everything if a person died intestate. With this knowledge, it is not reasonable to think that the Plaintiffs would have waited this long to register the estate. The delay in action until the brother had died makes the first plaintiff's credibility in his argument that he had no knowledge of the 1988 administration of the estate questionable.

The plaintiffs' silence and inaction from 1985 to 2021 despite knowledge of Javen's sole occupation of the land and purported control negate any claim that they only became aware in 2023. Indeed, the presumption is that the cause of action arose in 1988, when the initial registration and transfer of the property occurred. The plaintiffs allowed 35 years to lapse before challenging the 1988 registration. That delay is not only unreasonable but prejudicial to the first defendant, who has held the property since 2015 and is now facing claims based on undocumented oral arrangements.

Disposition

The defendant has proved that the plaintiffs' cause of action arose in 1988, when the property was transferred to Javen Chibharo. The plaintiffs' awareness of his long-standing occupation and their failure to act for over 30 years show they had constructive knowledge of the transfer. Under section 16(3) of the Prescription Act, delayed discovery must be reasonable, prescription begins when a person knows or ought to know the facts. The plaintiffs failed to justify their delay. Their claim, filed in 2024, is time-barred under section 15(d).

Order

In the result, it is ordered as follows:

1. The special plea of prescription is upheld.
2. The plaintiffs' claim is accordingly dismissed with costs on the ordinary scale.

Calderwood, Bryce Hendrie & Partners, plaintiffs' legal practitioners

Gundu Dube & Pamacheche Legal Practitioners.1st defendant's legal practitioners