

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

**Appeal No. 35/2017**



**BETWEEN**

**LIMPO GIFT SITUMBEKO  
(suing as administrator of the estate of late  
Theodore Situmbeko)**

**APPELLANT**

**AND**

**IMANGA MUSWEU  
(Sued as mother and guardian of  
Karen Situmbeko and Mulope Situmbeko)**

**RESPONDENT**

**Coram: Hamaundu, Kabuka and Chinyama JJS  
on 16<sup>th</sup> July, 2020**

**FOR THE APPELLANT:** In person

**FOR THE RESPONDENT:** Mrs M. K. Liswaniso, Legal Aid Counsel

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## **J U D G M E N T**

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This appeal is against the judgment of the High Court and is on two grounds couched as follows:

- “1. The learned trial judge misdirected herself that the deceased had debts of K22,500.00 and K9,000.00 and that a security for the debts of K9000.00 the deceased had pledged his Toyota RAV 4 to the lender centrally to my statement and fact that the deceased had a debt of K9,000.00 and that he borrowed K22,500.00 and left the Toyota RAV 4 as security but the lender claimed having bought the vehicle after*

*Theodore Situmbeko died and that this is a matter which the current administrator Limpo Gift Situmbeko wants to file in the High Court for restitution of the motor vehicle.*

2. *The learned judge misdirected herself that the deceased was survived by a spouse, Barbara Katengwe and three children, Emmah Situmbeko, Karen Sepiso Situmbeko and Mulope Situmbeko and that Karen Sepiso Situmbeko and Mulope Situmbeko are minors.”*

### **1. Observation by this court**

- 1 (a) We observe that both grounds of appeal attack findings of fact made by the trial judge. Firstly, that the deceased had debts of K22,500.00 and K9,000.00; and secondly, for leaving out one child of the family, Theodore Situmbeko Junior, when acknowledging the beneficiaries of the estate.

### **2. Analysis of findings of fact on grounds of appeal**


- 2 (a) With regard to ground 1 of the appeal our analysis is as follows:
- (i) The evidence on record shows at page 39, an acknowledgement of the debt of K22,500.00 made by the deceased in writing, dated 19<sup>th</sup> July 2013, for which he pledged his motor vehicle, RAV4, registration No. ABL 5113 as security for the debt.

- (ii) At page 33 of the record, paragraph 5, the evidence of the appellant reveals that the deceased owed K9,000.00 to a Ms. Emmah Sepiso Katungu, which remained unpaid.
- (iii) We therefor uphold the trial court's finding that the deceased did indeed owe the said sums. The fact that the RAV 4 was security for the debt of K22,500.00 and not that of K9,000.00 does not change these findings of fact as regards the deceased's liabilities.


2(b) With regard to ground 2 of the appeal, our analysis is a follows:

- (i) We note at page 14 of the record that although the learned trial judge did indeed leave out Theodore Situmbeko Junior, she did make it clear that all the interests of the beneficiaries, which includes Theodore Situmbeko Junior, should be catered for and considered by the administrator, which the appellant as the appointed administrator could easily have seen to.

- (ii) With that being said, we note that there was no need for the appellant to embark on this appeal as his grievances are on mere errors that could easily have been rectified by making application before the learned trial judge, as provided under Order 39(1), High court Rules Cap 27 which Order allows a judge to review any judgment or decision made by them by way of hearing fresh evidence and to reverse, vary or confirm their previous decision.
- (iii) We find both grounds to be without merit. Consequently, we dismiss this appeal. Since an award of costs will ultimately be paid by the estate, to the detriment of the beneficiaries, we make no order as to costs.

  
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E. M. HAMAUNDU  
**SUPREME COURT JUDGE**

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

  
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J. CHINYAMA  
**SUPREME COURT JUDGE**