THE GENDERED INHERITANCE: A CASE STUDY OF INTESTACY AMONG CIVIL SERVANTS IN SELECTED DISTRICTS

By
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A Dissertation Submitted to the University of Zambia in partial Fulfilment of the Requirements of the Degree of Master of Arts in Gender Studies

THE UNIVERSITY OF ZAMBIA
LUSAKA
2013
I, ........................................, declare that this dissertation:

(a) Represents my own work;

(b) Has not previously been submitted for a degree at this or any other University;
   and

(c) Does not incorporate any published work or material from another dissertation.

Signed: ........................................

Date: 5 September 2013
APPROVAL

This dissertation of [Redacted] has been approved as a partial fulfilment of the requirements for the award of the degree of Master of Arts in Gender Studies by the University of Zambia.

Signed:  

Date: 05/07/2013

05/07/2013

5th September 2013

05/07/2013
ABSTRACT

Background
The title of my study is entitled “The Gendered Inheritance: A Case Study of Intestacy among Civil Servants in selected Districts.” This study’s general objective was to explore the use of written Wills, by both women and men, in the civil service, for property distribution for inheritance. The main focus was to explore to the existence of any beliefs about a written Will. It was not clear the extent to which civil servants used the Wills and Administration of Testate Estates Act, to write Wills to determine the distribution of their property for inheritance.

Study Site
The study was conducted in Zambia in selected districts of Lusaka, Kafue and Kabwe. The participants were drawn from: Ministry of Education, Science, Vocational Training and Early Education; Ministry of Transport, Works, Supply and Communication; Ministry of Tourism and Arts; Ministry of Commerce, Trade and Industry and Ministry of Health.

Study Design
The study used a qualitative paradigm. Random sampling was used to select the study ministries. Convenient sampling was used to select the three study districts, while purposive sampling was used to select the study participants. The sample size was thirty six (n = 36) of which eighteen were male and eighteen were female.

Data Collection
Primary and secondary data were collected. Primary data were collected through thirty six personal interviews using an interview guide. Secondary data were collected through the review of the Wills register at the Lusaka High Court.

Data Analysis
Data were analysed qualitatively. Interview data were transcribed verbatim. Responses were grouped according to the questions they addressed. The data were coded according to generated data sets. Themes were developed from these data sets. Contextual meanings were extracted from the themes.

Findings and Recommendations
The study found a low rate of writing Wills. There was still reliance on provisions of the Intestate Succession Act. Out of thirty six participants only five had written Wills (three females and two males). The reasons for this were varied and categorised into superstitious and non-superstitious beliefs. The superstitious beliefs were that writing of Wills would cause death either by bewitchment or by the power of the Will. The non-superstitious beliefs included: lack of property (economic); individuals still wanting to bear children (social); lack of legal procedural knowledge for processing a written Will (legal); emotional attachment to the kin and kith; and lack of lived experience of writing a Will (role model). It was recommended that property inheritance be integrated in the social education to sensitise people of the procedure and importance of legal passage of property. Further, the Wills register must provide more data such as the sex, employment status (public service or private sector) and names of depositors to provide meaningful data.

Conclusion
Intestacy is still prevalent as there is still reliance on the provision of Intestate Succession Act and prevalence of various superstitions and non-superstitious beliefs.
To my mother, Sophia and my grandmother, Maria; my family: Eneless, Andrea and Melody
ACKNOWLEDGEMENTS

I wish to acknowledge my special debt to the following ministries: Ministry of Education, Science, Vocational Training and Early Education; Ministry of Transport, Works, Supply and Communication; Ministry of Tourism and Arts; Ministry of Commerce, Trade and Industry; and Ministry of Health. They granted and facilitated my study through their Human Resources Management. They availed personnel to participate in the research.

My sincere thanks are also given to the High Court Registrar at Lusaka High Court for granting me authority to conduct my research at that institution and to review the Wills register.

I also thank the staff at the Office of the Administrator General who enlightening me on the operations of that office. I thank also many other individuals that made contributions in various ways and forms towards my research.

I would not have been able to conduct this research without unreserved interest, criticism and guidance from my research supervisor, Dr Anne Namakando Phiri.

Finally, I thank my family for their patience, support, understanding and encouragement during the whole period of my study.
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**Glossary of Terms**

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<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome.</td>
</tr>
<tr>
<td>Basikamukowa</td>
<td>This is a Tonga concept that refers to the kin relatives that are traced through clan system based on the matrilineal lineage.</td>
</tr>
<tr>
<td>Ciko</td>
<td>Part of the dowry paid, among the Tonga of southern Zambia, which belongs to the woman for whom that dowry has been paid for. The rest of the dowry will belong to her parents or relatives except for the ciko which will be kept by her parents as her only property benefited from her marriage. This property is usually expected to be used by her and her children should the marriage break or if the husband dies.</td>
</tr>
<tr>
<td>Chokolo</td>
<td>A Chewa word that refers to a system where a widow is inherited by a kin to her deceased husband. It also refers to a system where a kin of a deceased woman is given to the widower as a wife to replace her deceased relative.</td>
</tr>
<tr>
<td>HIV</td>
<td>Human immunodeficiency virus.</td>
</tr>
<tr>
<td>Kukona</td>
<td>This is a Tonga concept that refers to a general act of inheriting. A person that inherits cattle from a deceased person is said to have gotten cattle through kukona.</td>
</tr>
<tr>
<td>Kulya zina</td>
<td>This is a concept that refers to a Tonga traditional system in which a living person is given the name of the deceased kin and assumes certain roles of the deceased.</td>
</tr>
<tr>
<td>Kuyobola</td>
<td>This is a Tonga concept that refers to the system where a kin of a deceased brother inherit the widow. It is also used to mean the system where a widower is given another woman by the relatives of his deceased wife as a replacement of the one that died.</td>
</tr>
<tr>
<td>Matrilineal</td>
<td>A social system that traces kinship through female descendants.</td>
</tr>
<tr>
<td>MWPC</td>
<td>Married Women’s Property Committee.</td>
</tr>
<tr>
<td>NAPSA</td>
<td>National Pensions Scheme Authority.</td>
</tr>
<tr>
<td>NPF</td>
<td>National Provident Fund or Zambia National Provident Fund.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------</td>
<td>------------</td>
</tr>
<tr>
<td>Patrilineal</td>
<td>A social system that traces kinship through male descendants.</td>
</tr>
<tr>
<td>SARDC</td>
<td>Southern African Research and Documentation Centre.</td>
</tr>
<tr>
<td>Ukupyana</td>
<td>This is a Bemba concept that refers to the general act of inheriting. It mainly though refer to the system where a kin of a deceased brother inherit the widow. It is also used to mean the system where a widower is given another woman by the relatives of his deceased wife as a replacement of the one that died.</td>
</tr>
<tr>
<td>YWCA</td>
<td>The Young Women Christian Association.</td>
</tr>
<tr>
<td>ZARD</td>
<td>Zambia Association for Research and Development.</td>
</tr>
</tbody>
</table>
CHAPTER ONE

INTRODUCTION

1.0  Background

In 1991 one family man in Kafue died and was survived by a widow and four children. The property of the family comprising household chattels were all shared by the family of the deceased man. It was argued that the deceased was the worker and he bought all the property. Since he died, then his kin brothers, sisters and parents were entitled to inherit his property. The widow was given her clothes, a few plates and blankets. The children remained with the widow.

This case depicts an instance when a widow and her children were denied their right to inherit property from their husband and father. Another widow that lived in Ndola with her husband was forced to relocate to the village without any inheritance. This phenomenon has been observed in society by some researchers like Byrne (1994) who observed that women have continued to suffer discrimination in property rights and rights to inheritance.

The relocation to new environment makes the affected surviving spouse and children vulnerable to poverty in the new environment. The phenomena of loss of property was also found by Hay and Stichter (1995) and the Women and Law in Southern Africa Research Project (c. 1994), this practice is commonly referred to as ‘property grabbing’. ‘Property grabbing’ is a local Zambian term meaning the refusal to allow a surviving nuclear family member (widow, widower or children) to inherit property from their deceased husband, father or mother. Instead the relatives to the deceased (especially the man’s relatives) take the property, leaving the surviving spouse and the children without anything. Literature attributes this practice to customary and misinterpretation of statutory inheritance laws.
Zambia has two laws, the customary and the statutory laws. In most cases property inheritance has been done through the customary law. Customary law is based on culture, and culture is based on tribal groupings. Gender is related to culture in that gender is shaped by culture. Gender identities and power relations are critical aspects of culture.

Power relations shape the way daily life is lived in families, communities and even the work place. Since gender is shaped by society it acts as an organising principle of society due to cultural meanings given to being male or female (Lober and Farrel 1990).

While gender relations varies among societies, the general pattern is that women have less personal autonomy, fewer resources at their disposal, and limited influence over the decision making process that shape their own lives. This can be explained by the social cognitive development theory. According to this theory society socialises male and female infants into masculine and feminine adults. As they grow children learn to grow up with these stereo types (Bussey and Bandura1999). They become different types of people, men and women, preconceived with cultural stereotypes about gender. This process repeats itself over and over again through socialisation institutions like families across generations making it seem natural and impervious to change (Coltrane 1998).

The loss of property leads to spiral effects. The family members suffer social, economic and emotional disorders. They lose their social support networks because of relocation to new environment in efforts to start a new life after losing what they had. The socio-economic disorders affect the family members in many different ways between, widow and widower, and between boys and girls. Some families even breakup.

The breakup families have been attributed to not only lack of income and sustenance but also by the breakdown of the extended family system (Hay and Stichter 1995; Women and Law in Southern Africa Research Project c. 1994). Literature indicates that one of the reasons advanced for the breakdown of the African extended family system is self-centeredness of modern families. The modern family is accused of embracing the western education and elitist social life style that promote nuclear families to the disadvantage of
relatives like uncles, aunties and cousins among other extended family members. The extended family system used to serve as a good social safety-net in times of social shocks (Himonga c. 1989; Women and Law in Southern Africa Research Project c. 1994). Judith (2003) has argued that lack of income lead to various types of crimes. Other offshoots of lack of income and social support could be poor nutrition and disease as those affected cannot afford to buy food nor access health care, education and relevant information to protect themselves from such vices.

These social negative statuses in which people find themselves become social problems in society, and they pose various risks to society and the nation. Developed nations have devised a welfare system, which they also refer to as a redistributive system, to ensure that people do not end up as beggars (Albertini et al., 2007). This is done to avoid the embarrassment begging causes to society and the state (Chipumbu 2009).

It was due to such problems that it was decided to draw up laws that promote equal property and inheritance rights between women and men. This was thought to be one way of ensuring that surviving family members are not adversely affected after the death of their bread winner and property owner.

The statutory inheritance law in Zambia began as a received law from the colonial government. According to history, the codified law was meant for the British settlers as it was based on English traditions which were alien to the indigenous people. It was not until in the post-colonial era that some Zambians started acquainting themselves with the culture and education of the white settlers that they started adopting the codified law (Himonga c. 1989; Hay and Stichter 1995; Women and Law in Southern Africa Research Project c. 1994).

In 1989, the post-independence state of Zambia affirmed the state’s commitment to property rights of the nuclear family members by restating and integrating this inheritance law into the laws of the land as; the Intestate Succession Act number 5 and the Wills and Administration of Testate Estates Act number 6 of 1989 respectively (Hay and
Stichter 1995; Mushota 2005). This law was expected to reduce instances of injustices, such as infringement of inheritance rights, against surviving spouses especially widows who were the principal target beneficiaries in this law.

The Intestate Succession Act (also known as the Intestate Succession law) provides for sharing of property according to percentages. The state’s view was that when a property owner dies without writing a Will (intestate), the property or estates should be passed on according to the prescribed law. The prescribed distribution according to Section 5 is as follows:

(a) twenty per cent of estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow’s contribution to the deceased’s property may be taken into account when justice so requires;

(b) fifty per cent of estate shall devolve upon the children in such proportions as are commensurate with age or child’s educational needs or both.

(c) Twenty per cent of estate shall devolve upon the parents of the deceased.

(d) Ten per cent of estate shall devolve upon the dependants, in equal shares.

This law aims at assisting the surviving spouse and children/dependants in circumstances where a person dies intestate. A person is said to die intestate when he/she has not left instructions either in writing or an oral message to the living on how his or her property should be inherited. The Will is a means by which a maker uses to speak to the living after death (Mushota, 2005). Wills have advantages of according the testator or testatrix opportunity to consider special needs of family members and minors which may not be done under the customary property distribution practice (Bowe and Parker 1960).

The Intestate law has not undergone radical changes from its original form to its current form. Most provisos found in the current law are as were set out in the 1989 edition. The proviso in 5(a) is very clear that the law shall in its operation make recognition of
monogamous and polygamous marriages. It also makes clear the biases it makes towards women. In its form, this law is not gender sensitive. It is asserting that it is the dead men’s property that will be available for inheritance by women.

The estates’ sharing did and still does not include a family house. The family house is reserved for the surviving family (Bbuku, C 2011, pers, Comm., 23 March). This is where the deceased is survived by children, wife or wives, other dependants and parents. Where there are no children or anyone in the named category of relationships, the estates are passed to other prescribed relatives. The Intestate Succession Act provides that where all near relatives are all dead, the estate belongs to the state.

The Wills and Administration of Testate Estates Act provide or allow persons of mature age and sound mind to make wills. The Wills are expected to apportion property to the nuclear family members. It is expected that when the Wills are used to distribute estates this can mitigate property loss suffered where there are no Wills. The enactment of this law means that the Wills have to be accepted as a way of life.

The sex biases can be seen from this law. The codification of these sex differences assign property ownership to one sex, male, thereby making property ownership and property rights a gender issue. It becomes a gender issue because the concept gender is socially constructed and refers to social differences and relations between men and women. These differences are socially constructed (culturally determined and enforced) and are learnt and monitored by society. They are reflected in the roles, responsibilities, and access to resources, constraints, needs, perceptions, and views. These relations and differences can be changed and modified (Lober and Farrel 1990).

It should be noted however that gender is not synonym for women or men, but considers men and women, boys and girls and their interdependent relationships. In a broader socio-cultural context, gender takes into consideration aspects such as class, financial situation, ethnic groups and age. The statuses or locations shape our opportunities, access
to resources and needs from birth. As such, gender issues affect the lives of both women and men, and have economic as well as social implications (Lober and Farrel 1990).

Sex refers to biological characteristics which define whether you are male or female. Sex differences have existed through history and across cultures. But gender roles have been different at times in history and in different societies. According to Chafetz (1990) the maintenance and reproduction of inequality is understood to be fundamentally rooted in the gender division of labour. This is labour, both within and outside the family household. It is these gendered social relations that help shape women’s, girl’s, men’s, and boy’s position within society.

Looking at the meaning of gender it becomes clear that the statutory law was made for men’s execution to the benefit of women. In other words it is like the law is saying that men should create property and hold it while they are alive and that women should not create wealth while their husbands are alive.

The gender empowerment theory and the Marxist-feminist theory explains this as one of the core social processes that create two groups of people those that have (men) and those that do not have (women) (Chafetz 1990). Those that have are usually referred to as the dominant and the superior group who happen to be the men and the inferior group or subordinate group who happen to be the women. This culminates into female oppression.

It has also been argued that the reproduction of gender inequality is fundamentally rooted in the lack of ownership of property that has value and that the women’s collective opportunities to enhance their status (relative to men) in their society rest on their increasing access to resource generating work. But unfortunately, the majority of the women have no or own no means of production. Chafetz (1990) also acknowledges that access to resources, is largely controlled by men, and it changes primarily in response to forces outside the control of women. It can also be seen in day to day practice where society assigns roles according to sex. Those assigned to men are usually economically rewarding.
The feminist theory views this whole process as being reinforced by the legal stance as the characteristic manner of the working of the patriarchal system that relegates women to the status of children (Chafetz 1990). The Intestate law seems to be contradicting itself in that on one hand it assigns property to men while on the other hand it acknowledges that it is not right that only men should own property. Gender unwittingly showed its face in the property rights and inheritance rights of women and men.

This statutory inheritance law has effectively been in existence in Zambia for twenty four years now. Much literature documents the discrimination of the inheritance practice against widows especially in regard to land. It’s because of this approach that literature indicate that the majority of the recorded court cases involved only widows claiming their rights to inherit from the estates of their deceased husbands. One example is the findings of the Women and Law in Southern Africa Research Project of 1992, in which all 9,185 cases, that related to inheritance all involved widows claiming their rights to inherit from the estates of their deceased husbands. In comparison to the inheritance claims arising from dying intestate, there were only ten testate properties in Lusaka, Mongu and Kasama in the period 1988 – 1992. This represented about 0.04% rate of writing the Wills, an indicator suggesting that there was high level of dying intestate.

Whilst the period 1988 – 1992 recorded ten African written Wills, the period 1976 – 1981 had recorded more Africans (nineteen), that had written Wills as compared to the later. One would have expected to have seen a rise in the number of Wills in the period of 1988 – 1992 in comparison to the period of 1976 – 1981, for various reasons. First, restrictions on who could write a Will were removed in 1989, and secondly, one can assume that the number of Africans who had entered the labour market had increased.

Tables 1.1 and 1.2 both on page 8 show summaries of the total cases reviewed, number of inheritance related cases and number of Wills found by the Women and Law in Southern Africa Research Project (c. 1994) in their study area for the periods 1976 – 1981 and 1988 – 1992 respectively.
<table>
<thead>
<tr>
<th>Period</th>
<th>Area</th>
<th>Total cases</th>
<th>Inheritance related</th>
<th>% of total cases</th>
<th>Wills registered</th>
<th>% of total cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976 – 1981</td>
<td>Lusaka High Court probate register</td>
<td>223 wills</td>
<td></td>
<td></td>
<td>19</td>
<td>8.5</td>
</tr>
</tbody>
</table>

Table 1.1 Writing of Wills in Lusaka 1976 – 1981


<table>
<thead>
<tr>
<th>Period</th>
<th>Area</th>
<th>Total cases</th>
<th>Inheritance related</th>
<th>% of total cases</th>
<th>Wills registered</th>
<th>% of total cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988 – 1992</td>
<td>Lusaka</td>
<td>19 572</td>
<td>9 177</td>
<td>46.9</td>
<td>4</td>
<td>0.04</td>
</tr>
<tr>
<td>1988 – 1992</td>
<td>Mongu</td>
<td>699</td>
<td>6</td>
<td>0.86</td>
<td>3</td>
<td>0.43</td>
</tr>
<tr>
<td>1988 – 1992</td>
<td>Kasama</td>
<td>589</td>
<td>2</td>
<td>0.34</td>
<td>3</td>
<td>0.51</td>
</tr>
</tbody>
</table>

Total for research area for period 1988 – 1992

<p>| | | | | | |</p>
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<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20 265</td>
<td>9 185</td>
<td>45.3</td>
<td>10</td>
<td>0.04</td>
</tr>
</tbody>
</table>

Table 1.2 Writing of Wills in Lusaka, Mongu and Kasama 1988 – 1992


The use of the Wills for distribution of one’s estates, once fully embraced could mitigate poverty that arises from loss of property a family had before the bread winner died. When the Wills are used widely they can become a normal way of life and the surviving spouses and orphans will no longer be subjected to ‘property grabbing’. Literature attribute the seeming none usage of the provisions of the Wills in administration of the inheritance to many factors including religious beliefs, customary practices and the myth that writing Wills invites death or draws death near. Himonga (c. 1989, p. 161) asserts that reasons advanced for not making and leaving wills include ‘ignorance of the law’, the difficulty technicalities of the law, and lack of real property and fear of being bewitched on the part of the testator or testatrix. Bowe & Parker (1960) carried out a study in the United States of America on the usage of the testamentary Wills. No such study has been conducted in Zambia yet.
1.1 Statement of the Problem

The rate of dying intestate in Zambia is still very high. The Majority of the Zambians do not seem to take advantage of the Wills and Administration of Testate Estate Act. It has been estimated that more than ninety per cent of Zambians die intestate (Hay & Stichter 1995; Women and Law in Southern Africa c.1994; Zaloumis n.d.). This phenomenon has caused many surviving family members especially spouses and orphaned children to fail to inherit property. The inheritance rights are denied even when in the modern economic trend properties are acquired by couples pooling resources from incomes they individually earn. Couples invest with a view to secure their lives in old age and the future of their children. In most circumstances children and especially the widows are usually prevented from inheriting estates, through a trend where relatives of the deceased persons take away property from the surviving families without any considerations. These practices lead surviving families to become destitute and vulnerable to other forms of shock such as lack of housing.

Some examples of challenges after bereavement include children dropping out of school or changing schools because they cannot afford the school fees. In some cases the family have to relocate from the place of usual residence to an inferior place. Sometimes children are shared among relatives. This creates psychological trauma to the surviving spouse as well as the children.

It remains a wonder why Zambians after being able to have some property under such economic challenges do not seem to take advantage of the Wills and Administration of Testate Estates Act. This Act can help channel the inheritance of the property to the nuclear family and other intended beneficiaries. Lack of testamentary Wills, create a second tragedy for the surviving families as they are forced not only into *subjection* and *dejection* but also are left in a state of *despair*.

The reasons for dying intestate have not been established. Earlier studies conducted in Zambia have concentrated on the plight of the widows under the cultural system and how
land is denied to women. These studies however made reference to dying intestate. This study seeks to establish factors that cause Zambians not to write Wills.

1.2 Research Objectives
1.2.1 General Research Objective
The general objective of this study was to explore factors causing intestacy among the urban civil servants in Zambia.

1.2.2 Specific Research Objectives
This following were the specific research objectives:

a. To find out the prevalence of having written Wills among selected Zambian urban civil servants.

b. To explore the factors surrounding Will writing among selected Zambian urban civil servants.

c. To establish what is known by selected urban Zambian civil servants about the Wills and Administration of Testate Estates Act.

1.3 Research Questions
1.3.1 Main Research Question
What are the factors that cause Zambian urban civil servants to die without writing Wills?

1.3.2 Specific Research Questions
This following were the specific research questions:

a. What is the prevalence of Wills writing among selected civil servants in Zambia?

b. What factors cause urban Zambian civil servants to write or not to make written Wills for inheritance of their property?

c. How knowledgeable are the urban Zambian civil servants about the Wills and Administration of Testate Estates Act?
1.4 Definition of Terms

**Children** – This concept has been defined by Ryder (1965, p. 143) as *‘immediate descendants and does not include grandchildren. But it can apply to grandchildren ... where there are no surviving children but grandchildren’*. Children in this study will mean descendants, already born or already conceived, of the deceased who were biologically born or adopted through a recognised legal system. This definition of the term children had the same meaning to that explained in the Intestate Succession Act and the Wills and Administration of Testate Estates where it states that a ‘*child means a child born in, or out of marriage, an adopted child, a child who is conceived but not yet born*’ (Section 3).

**Estate** – This concept is defined in this study as assets, liabilities and chattels acquired through personal effort during the life time of the deceased. The definition given by the Intestate Succession Act, though it seems to be holistic, does not differentiate property acquired through personal effort and that acquired through ascription. In Section 3, an estate is defined as

> All assets and liabilities of a deceased, including those accruing to him [her] by virtue of death and for the purposes of administration of the estate under Part III includes personal chattels.

In this study the definition adopted for estates is that referring to all forms of acquired through ones’ industry.

**Gendered** – This concept refers to general social trend that assign property rights to a particular sex of the human race. It is drawn from the concept gender which refers to the society’s tendency to socially construction and assigning of roles to men and women (Giddens 2001). The social assigning of the role of owning and inheriting property to either males of females to the exclusion or disregard of the other sex was in this study called gendered.
Inheritance – The Wills and Administration of Testate Estates Act and the Intestate Succession Act both do not define inheritance. The concept inheritance is associated with the passage of real property to the heir by descent in accordance to the discriminatory law of primogeniture. This law favoured the male descendants or the male line, in some cases to the total exclusion of the females, and favouring the eldest son to the disadvantage of the youngest (Bowe and Parker 1960). Inheritance does not technically include personal property and social responsibility of the deceased (Hay & Stichter 1995; Women and Law in Southern Africa Research Project c. 1994). The Inheritance concept is borrowed from the English traditions and foreign to the Zambian culture. The interpretation of the concept inheritance in the Zambian tradition means both succession and inheritance (Women and Law in Southern Africa Research Project c. 1994, p. 12). Inheritance per se is not pure in the Zambian context but a conundrum that mixes passage of social responsibility, personal property and real property to the heir. In this study, inheritance will mean passage of real property that is not held for and on behalf of customary authority or on behalf of the family. It will mean real property belonging to the deceased by virtue of their effort and industry.

Intestate is a term that refers to persons that die without leaving a Will that has been registered in accordance to the provisions of the law. The Intestate Succession and the Wills and Administration of Testate Estates Acts have the same definition of the term intestate. This definition is found in Section 3 that state that the:

\[\text{Intestate is [a] person who dies without having made a Will and includes a person who leaves a Will but dies intestate as to some beneficial interest in his movable or immovable property.}\]

Section 2 of the Legitimacy Act, repeats this definition but replaces the concepts movable and immovable property with real and personal estates.

In view of the definitions made in the Acts, the terms intestate and testate are relative terms. One that makes a Will disposing certain property dies testate in regards to the assets on the Will and dies intestate in respect to asserts not included on their will. This relative state is called partial intestacy (Intestate Succession Act, Section 4). It should
follow that one that dies without any will disposing any property is complete or full intestate.

**Intestate Succession** – This refers to the passage of property without a written or oral will while **Testate Succession** refers to passage of property through a written or oral will (Bowe and Parker 1960, p. 5). These terms are not defined by both the Intestate Succession and the Wills and Administration of Testate Estates Acts.

**Property** – This is a generic term that means real assets and chattel whether acquired through own effort or through ascription. This term is not defined by the Intestate Succession Act and the Wills and Administration of Testate Estate Act.

**Succession** – This refers to passage of personal property or chattels to a person upon the death of the owner in accordance with the English traditions (Bowe and Parker 1960). In the Zambian interpretation, the concept combines the two English concepts – inheritance and succession, and proceeds to add the custom of passage of social responsibility (Women and Law in Southern Africa Research Project c. 1994). The concept succession, just like the concept inheritance is not defined in both the Intestate Succession Act and the Wills and Administration of Testate Estates Act. In this study, succession will mean passage of personal property or chattel but not involving passage of social responsibility.

**Testate** is a term that refers to persons that leave a Will at the time of their death. Both the Intestate Succession and the Wills and Administration of Testate Estates Acts do not define this term. The Wills and Administration of Testate Estates Act come close to defining testate in Section 64 (a) where it provides for dispute resolutions. In this section it provides for the courts to determine the validity of a document purported to be a Will. In so doing, it will be ascertaining whether the deceased person died testate or not. This term was used in this study in relation to the term intestate and referred to persons that left a legally recognised Will on their death.
**Widow** – This term refers to a woman whose husband has died. This definition will include women in polygamous marriages whose polygamous husband has died. Whereas this term is not defined by the Marriages Act, the Intestate and Succession Act recognises polygamous marriages and it states ‘marriage’ includes a polygamous marriage and ‘husband’, ‘surviving spouse’, ‘wife’ or ‘widow’ shall be construed accordingly (Section 3). Whereas the Affiliation and Maintenance of Children Act includes a widow in defining a single woman, the definition of widow in this study will only refer to a woman whose husband died.

**Widower** – A term widower will be used to mean a man whose wife has died. Since a marriage includes polygamy, as recognised under the Wills and Administration of Testate Estate Act, a widower shall be a man whose one only or one of the several wives has died (Section 3).

**Will** – A Will is defined by Blackstone as ‘a disposition made by a competent testator in the form prescribed by law, of property over which he has the legal power of disposition’ and that this only takes effect upon the death of the maker (Bowe and Parker 1960, p. 15). This definition is silent about the realty of the property being passed on; it means property can be real or personal. Clapp (1962, p. 2), and Bowe and Parker (1960) defined a Will as the:

> disposition of rights or powers, intended by the maker to take effect on or after his [her] death; until his [her] death, the entire dominion over those rights and powers remains in him [her], as, under undelivered deed. Per contra, a disposition of a right or power, effected before the death of the maker, which is accompanied by an intention on his [her] part to have the disposition become effective in his [her] lifetime, is not a Will.

Drawing from these different definitions this study proposes to define a Will as a testamentary instrument, that come into effect upon or after the death of the maker, an instrument through, which the maker speaks from the dead, making known their plan for the distribution of their property. A Will is the speaking of the dead from the dead.
1.5 Justification of the Study
This study was significant in exploring the prevalence of written Wills among selected urban civil servants in Zambia. This has contributed to filling the gap that existed about the social orientation of urban civil servants towards written Wills for distribution of their inheritance. Inheritance is a social phenomenon that is occurring among Zambian people and therefore it is important to understand it. Such a study had not been done in Zambia before.

The study has also added to the body of knowledge about inheritance in the Zambian law and practice. The classification of beliefs developed in this study can be used by service providers to device educational programs for not only civil servants but the general population of Zambia. This will assist in creating popular awareness of the importance of equality of property rights between females and males and will encourage the use of Wills as testamentary means of estate distribution and administration. It also has the ability and potential to change customary beliefs and practices that relegate women to the fringes of property rights and ownership. That could also assist in countering the negative tag attached to the written Will, the legal system and procedure requirements. The findings may also be used to formulate theories that can explain the behaviour towards making written Wills.

This study is also important as a partial fulfilment towards the requirements for the award of the Master of Arts in Gender Studies.

1.6 Limitations
This study had three limitations. The first was the unavailability of enough participants at a single time for a focus group discussion. Morgan (1998a in Bryman 2008, p. 479) sets the focus group discussion size to be between ’six to ten members’. The Human Resource Officers that were making participants available for study could not assemble six participants or above at one time. Because of this limitation no focus group discussion was undertaken. Instead thirty six personal interviews were conducted. The second limitation was the inadequacy of information contained in the Wills register at the Lusaka
High Court. The available information did not indicate the sex and employment status of the depositor of the Will. These and other missing details invalidated the data as they could not suit into the requirement of the study. The third limitation was lack of the Wills register at Kabwe High Court. Therefore no secondary data were collected from Kabwe.
CHAPTER TWO

LITERATURE REVIEW

2.0 Gendered Property Rights across Historical Milieu

Property ownership practices like any other social action can be traced through human history. Men and not women and boys and not girls have been socially sanctioned to own and give off property. This is seen in the traditional systems that sanction male ownership and passage of property to male children in many societies of the world including those in Africa and Zambia in particular. This is because culture shapes the way things are done. The world conference on cultural policies (Mexico 1982) defined culture as:

The whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or a social group. It includes not only arts and letters, but also modes of life, the fundamental rights of the human being, the value systems, traditions and beliefs.

Since culture is a way of life this means that it is dynamic. In its dynamism not everything changes and that which changes does not change in a uniform manner. In the same process some values get reinforced because culture is defined by people. Other than culture, society also assigns different characteristics and roles to men and women. Usually, the highly valued activities tend to be the domain of men who happen to be the dominant group. While the less valued functions are relegated to women (the subordinate group). These differences and inequalities created between men and women should not only be seen in terms of activities carried out, but also in terms of access and control over resources and also in decision making opportunities as well.

This cultural practice was experienced by the researcher when a relative’s wife died. The widower in this case remained in the matrimonial house without much resistance from the late wife’s relatives. He later remarried and stayed in the same house he built with the late wife. Relatives to the late wife did not offer any resistance nor ask the man to vacate that house.
According to Section 9 (2) of the Intestate Succession Act, a widow or widower lapses their interest in the matrimonial house of the former marriage upon remarrying. Since society treats men and women differently this law is observed to be applied more against women than men despite the provision itself being gender neutral.

Section 9 (2) state that ‘the surviving spouse shall have a life interest in that house which shall determine upon that spouse’s remarriage’. This demonstrates that property ownership and inheritance is gendered towards the male sex. This is as confirmed by Dale Spender (1981, p. 3) that the highly valued activities in any particular society will tend to be enclosed within the domain of the dominant group. This is because the superior group (men) with power is in position to provide positive meanings about its group and thereby reinforce and perpetuate that power.

Women have always been looked at as minors that could not own property and could not have equal property rights with men. This was not only at micro levels but transcended through to the macro political level as is evidenced by a quote made by Bropy and Smart (1995, p. 8) from the British parliamentary debate of 1924:

*The status of women has very much changed in the last twenty five years ... she has almost the same status as a man. She has not altogether the same status because it is necessary to preserve the family as a unit and if you have a unit you must have a head.*

It was this line of thought that Frances Power Cobbe (Bropy and Smart 1995, p. 8) called the perception of women as minors, as *legitimation of theft* as early as the 1860s. The argument is that the law should not promote and defend the appropriation of a wife’s property by her husband. In Europe property ownership was assigned to the male and institutionalised by statutory codifications.

In Africa it remained oral and embedded in ‘male-centric’ oracles defining culture. Among some ethnic groups in Africa, sons inherited property from their male genitors and women received no portion from their fathers and husbands (Radcliffe – Brown and Forde 1965).
In such tribes women were not included on the distribution list for cattle and land distributed by the heir of the dead man. Even where women owned property, their property was identified with men; their husbands, fathers, brothers or even their sons. In this respect it was expected that women and their property would remain under the care of a man in one way or the other until their death.

Mapetla, et al (2007), and Wheeler (in Thompson 1825) observed that women never reached the majority age. This meant that women were perpetually minors. As minors their interests were involved with their husbands, fathers and sons. This meant therefore that women were from the cradle to death to remain under the care of men irrespective of the age of these men in comparison to the age of the dependant women.

This fits into the essayist Richard Steel’s definition of a woman who in 1710 defined a woman as ‘a daughter, a sister, a wife and a mother, a mere appendage of the human race’ (Hunton in Davis and Farge 1993, p. 15). This definition of a woman has been made in relation to a male relative. This definition suggests a woman should always be under a close eye of a male relative and to remain a tool for the production and reproduction for the benefit of men and not to women to participate in what men do.

This social process of human society could be associated to Émile Durkheim’s primitive society. The social cohesion of that society was based on uniformity of actions and beliefs. According to Bronislaw Malinowski (1926 cited in Nisbet 1965, p. 109) the social uniformity was maintained through ‘a corpus of ... civil law, involving rights and duties between individuals, and kept in force by social mechanisms’. This mass body of laws restricted women and men to specific rights probably even in property ownership which surprisingly has continued into the modern age. While the feature of modernisation is ‘inderterminancy [sic] and rapid changing roles’ (Sprott 1952, p. 155 cited in Nadel 1957, p. 46), it is not the case for property rights in respect of women. The property rights for women have continued to be determined by men and not by women themselves.
There were exceptions and variations among the African tribes to the general rule. The Lozi people of the Western part of Zambia and the Zulu of South Africa are among examples of such exceptions. Among these two African tribes, women could be allocated property like land by their fathers or husbands and could retain the claim to it. Such property was separate from family property but remained under the care of the man heading the family. The women’s ‘heirs, agnatic or uterine’ could inherit such property following the death of their mothers (Radcliffe-Brown and Forde 1965, p. 196). The Lozi people and the Zulu’s property rights rules of women and men become isolated cases where equality in property rights between women and men seemed to exist. The studies by Radcliffe-Brown and Forde (1965) and Bropy and Smart (1995) made similar conclusions that the general trend was that of male dominance in property ownership and inheritance.

From these arguments one is bound to make deductions that women’s discrimination against having and owning property is rooted in their sexual and reproductive biological anatomy. It is about their bodies and that their sex determines their place in a family as men’s daughters, brittle sisters, and cosseted wives of men and mothers of men’s children. In this view, one is bound to make conclusions that women were tools for the production and reproduction for the benefit of men and not for the women to participate in what men do.

Women’s sexuality becomes a property of women for men wholly owned together with them by men. It therefore, follows that a property cannot own another property for it is a property itself. And what a great irony and contrast that ones’ rights to their capabilities and abilities should be determined and defined for them by others using that very parameter they are in awe and do not understand.

This intangible battle between the two human sexes has drawn many researchers and writers. The analysis of the relationship between women and men continue to objectify itself into sexualised power relations between the two human sexes. It has been argued, by the advocates in this subject, using various analogous including that of the state and
religious systems to explain the subjugation of women by men. It is hypothesised that men’s appetite for supremacy caused them to subvert and valorise themselves as curators personifying their mischief into the human uniting social systems of the state and religion. They masterfully, though and under duress, crafted laws in masculine language justifying it that masculine pronouns represented both sexes of the human race.

The submission of women is imbedded in the exchange theory. The exchange theory argues that, in order to maintain a health and sustained relationship, ‘partners must provide for one another approximately on equal basis’ (Chafetz 1990, p. 22). In most societies, men have greater access and control to resources including means of production upon which women especially wives are dependent. The analysis of the power base and power relations between women and men show that women and men form two separate groups. This relationship of dominance and muteness creates a positive and negative polarisation of superior and inferior groups. As an inferior group, women’s contributions are usually done in conditions of disadvantageous in relations to access and control and benefits from these resources and their use. As such women are forced ‘to offer deference and compliance to men’ (Chafetz 1990, p. 23).

Unlike the exchange theory which is characterised by spousal exchanges, the social exchange theory consists of exchange of gifts and favours. Analysing the power relations, men (husbands) are likely to acquire superior resources to those of their wives. Because of the extra familial roles, husbands are likely to acquire interpersonal power over their spouses.

Religion also has been blamed for gender stratification (Radtke and Stam 1994). However the bible does not say that women are less important than men. When Adam and Eve were created, their instructions and blessings did not assign superior and inferior status between them (Genesis 1: 27 – 31). They were equal before their creator. Just like Paul later writes to the Galatians that ‘... there is neither bond nor free, there is neither male nor female: for you are all one in Christ Jesus’ (Galatians 3:28).
The critics of religion therefore believe that religion had its share in making the masculine nouns innocuous by attaching a male gender to the pronouns of the Almighty God (Radtke and Stam 1994). This school of thought argues that religion encourages women to believe in the celestial reality that has more power than the objective world. Women internalise the belief that honouring the celestial power and authority militates against unpleasant experiences especially in the celestial world. The system then becomes an effective institution that socialises women to submit to their husbands who are to be seen as representatives of their celestial creator. Through the working of this kind of system of beliefs, submission becomes a way of life that is innocuous. This school argues that by these machinations, the system of discriminating women in property rights is caped and sealed to the benefit of men and the dooming and silencing to women.

It has been argued that the marriage of the state system and religion, exploited the masculine agenda as a convenient apparatus to perpetuate their male gender supremacy (Kingdom in Bropy and Smart 1995). In executing this gender power battle, the cunning state system crafted a law that camouflaged the truth.

The feminist theorists explain the crafting of state laws in masculine tone as a scheme to exclude women from participation from politics and contesting political office hence relegating them to be appendages of their husbands. Implicit in this masculine construction of the law, was the disempowering of women to own property as they had no access to means such as education, paid labour and were excluded from the public sphere. The activism of early feminists like Olympe de Gouges and others (Clark 1992) helped to bring the discrimination of women into the public domain. These activists eventually led to changing of laws.

Realising that women were denied property rights, laws were passed that compelled men to adequately provide for their wives even in their death. Britain was no exception from this as evidenced by her 1938 Inheritance (Family Provisions) Act that had a proviso that put a responsibility on British men of making adequate arrangements for their widows in the Will (Sherrin, et al., 1980).
The Basotho society of Southern Africa, also had a social rule that the heir was to be the first male child in the senior marriage, except where there was no son. In that case, the son in the next marriage would be the heir (Mapetla, Annschlyter and Bless 2007). The behaviour of men and women is a reflection of their socialisation process rooted in gender power relations. As a child grows, they are engendered according to their sex. This early transmission of gender norms and engendered personality attributes, become norms which affect behaviour and choices one makes throughout one’s life time. In these power relations, males and females are socialised differently. The knowledge regimes are invested in the gender power relations. Society tends to favour the knowledge of the socially sanctioned behaviour and conformity that lead to acceptable rewards. Parsons argued that the appeal of positive rewards enhances behaviour (Nadel 1957).

According to the socialisation theory, children are purposefully taught to socially identify themselves with ‘gender-appropriate ways of thinking, feeling and acting’ (Chafetz 1990, p. 25). This is done through socialisation institutions like families, schools, and to some degree religion.

The other structures of socialisations include peer groups, media, games, clothing styles and language. These structures tend to project behaviours acceptable and expected of women, and girls and that are expected of men and boys. Those that do not act in accordance to the socially projected norms tend to be socially negatively perceived, while those that conform to the expected norms, are positively rewarded. There is extensive use of patronising language in this process, such as; you are a girl and girls do not play football or you are a boy and boys do not cry.

As they grow into mature adults the boys and girls are patronised by their significant others, into learning that the men will have to provide for their wives while wives will have to be provided for by their husbands. This process shapes their choices and decision making as they internalize and accept the socially constructed gendered behaviour (Chafetz 1990).
In this way men learn to own property because they have to provide for their wives while women learn to wait for their husbands to provide property for them.

In the analysis of the social construction discourses of gender power relations Radtke and Stam (1994) understood the role of gender as a pivotal factor in social politics between men, between women, and between women and men. To that effect Radtke and Stam (1994, p. 61) stated that:

[gender is a primary feature of the constitution of the self, and the basic choices are either to accommodate the culturally specific and historically situated assignments for members of one’s sex or to resist.]

This thought can be amplified that the accommodation of the culturally specific and the historically situated forms are the root basis for one’s behaviour. Suffice to say, that the perception that property ownership, is the men’s domain is culturally specific and historically situated. Similarly women are culturally and historically situated in the social position of not being socially legitimate to own property. The women can only inherit in the new milieu through the state laws of intestate succession or testate succession. In this perspective women are socially prepared not to make their own independent Wills because they are not expected to own property.

This social construction then further subtly coerces women into submission to registration of property in the husband’s name even when it is acquired by joint effort of themselves and their husbands. This leaves the women with no access to property but only through inheritance. Realising the precarious situation of women the state provides intestate and testate succession laws and emphasise that men should bequeath their property to their widows.

In the light of the above observations it becomes clear why the Women and Law in Southern Africa Research Project of 1994 found that all cases brought before the courts involved widows claiming shares from the estates of their deceased husbands. The trend they found showed that women are disadvantaged when it comes to accessing and control of property. This phenomenon then becomes a clear case of attaching sex to property ownership and rights which the researcher is calling gendered inheritance.
The gendered inheritance is where only men made and left wills. This could point to gender stereotyping about property rights and ownership. It would seem that there exist a naturally prescribed law that men will make wills in order for women to inherit property. This assumption makes inheritance ‘sexed’. One sex – male, of the human race must own property and only pass on this property to the second human sex (de Beauvoir 1949) upon death.

The sexed socialisation of property rights is what Barrett (1980, p. 206 in Radtke and Stam 1994, p.73) called the ‘ideology of familialism’. Although the study by Women and Law in Southern Africa Research Project was not nation-wide and that these cases are not representative to make a generalisation, it would still seem that men executed wills and not women. There was no estate contested for by a widower. These findings of Women and Law in Southern Africa Research Project seem to suggest that ownership of property is gendered. The stereotype mind would suggest that property belongs to men and men should execute wills for women (widows) to inherit. This thinking was also identified by Ruth Meinzen-Dick et al, (1997, p. 1304) who said that the:

\[
\text{[The]} \text{ focus of property rights analysis has too often been on the rights held by a household, and the de facto or de jure male household head, without recognition of how these are differentiated between individuals based on gender, age, or other intrahousehold characteristics.}
\]

This thinking gives understanding that inheritance espouses property rights of both women and men. According to Bromley (1991 in Ruth Meinzen-Dick et al, 1997, p. 1303) property rights do not only mean ‘rules’ stipulating means of access and control but also the use of resources. These aspects are in relation to the wide society that must sanction them for individuals to enjoy them. In this sense property rights define the relationships that exist between women and men. In the case of inheritance the relationship points to men being first before women.

Varga (2006) also argued that property rights were marred with glaring administrative gaps that worked against widows. For Varga (2006, p. 3) these gaps were:

\[
\text{... lack of proper documentation and planning, e.g., wills; customary practices pertaining to property and inheritance, such as widow}
\]
inheritance; inconsistencies and contradictions between traditional and statutory legal guidelines; lack of legislation on property and inheritance; gender biases and loopholes in existing laws, codes and policies; corruption within the legal system; and public ignorance with respect to the legal rights of individuals.

All these arguments beg explanations of the factors that prevent women and men of different statuses from making wills. The reviewed studies’ focus was however on succession and not execution of wills. They were not investigating the extent of the use of wills. In the same vein, other studies reviewed in this study did not aim to find out the extent of writing Wills in preparing estates for inheritance.

2.1 Inheritance in the United States of America and Europe

A study of intestacy was carried out by Bowe and Parker (1960) in the United States of America in which they evaluated two previous studies. It was however noted that the two studies were regional surveys. According to these studies the testacy level was approximately 52.5% (Bowe and Parker 1960, p. 22). It was evident in their findings that intestacy of above 45% was far beyond what they expected. Their shock was compounded by the existence of intestacy among classes of people they considered informed and enlightened such as the university graduates, lawyers and journalists. The findings revealed that about 28% of the participants, more than one fourth of the lawyers, had no testamentary Will. The study also revealed that journalists and teachers had no Wills. In the final analysis it was discovered that:

Two-thirds were without wills and approximately half of the newspaper people and teachers had no Wills whilst the pharmacists were found to have had the worst percentage of intestacy.

According to Bowe and Parker (1960), in their search for the reasons of unprecedented 45% plus intestacy yielded the explanation that wage earners postponed Will making till their estates were large enough and worth putting in a Will. The other reason was the preference of intestate death as a way of avoiding legal complications in the passage of property. It is not however known the extent to which this can be said to be true in the Zambian context. This is a gap that can only be filled by further research.
Whereas, Bowe and Parker (1960) in the United States of America, discussed intestacy with seemingly sex neutrality, in Europe, family property rights were sex polarised. Inheritance property rights were studied in view of women’s rights to own, use and dispose off private property independent of the husband’s or fathers’ interference or control.

As such the property rights campaign for women could be traced as far back as the nineteen century and has continued through into the twenty first century. The European women’s property rights campaign could be traced from the formation of the ‘Married Women’s Property Committee (MWPC)’ in the 1880s in Britain (Brophy and Smart 1995, p. 9). The MWPC lobbied the British parliament to enact the ‘Married Women’s Property Act’ that empowered women to the level of retaining for themselves the property accrued to them before marriage. This is because women, used to bring with them property into marriage. Accordingly, a law was passed which required men to make adequate arrangements for their wives even in death (Sherrin, Barlow & Wallington 1980).

2.2 Inheritance Law in Zambia prior to Codification
Inheritance has existed from time immemorial among human societies in different forms. In some societies it has evolved to levels it has been seen as beneficial. It is the level of satisfaction that has been the subject of conflict among societies. This is true in the African tribes including Zambian tribes (Radcliffe-Brown & Forde 1965). In Zambia the majority of the tribes practiced the matrilineal and patrilineal family system.

In the matrilineal system, children looked to their mother’s side for inheritance. They inherited from their mother’s brothers and from such uterine relationships. The children in the matrilineal system did not inherit from their father’s estate. In the matrilineal system a man’s property was inherited by his mother, brothers, sisters, maternal uncles and his sisters’ children (Mushota 2005).

The patrilineal system was also practices but not by many tribes. In the patrilineal system, children inherited from their father. The consideration for the paternal relations was made
second after the biological children of the man (Radcliffe-Brown & Forde 1965). This system like the bilateral system practiced by the Lozis was the least practiced. In the bilateral system of the Lozis, children could inherit from both the mother’s and father’s side (Himonga c. 1989).

The situation in other African inheritance customs was similar as the widow was not anywhere on the list of beneficiaries from the estates of her late husband. A widow was left to the mercy of the heir of her husband who in most cases inherited her as well (Radcliffe-Brown & Forde 1965).

A widow was in this case an asset that was to be transferred from one man to another. The widow had no right to benefit from her husband’s estates irrespective of her personal contribution to the acquisition of the family estates. While making this observation it is interesting to note the silent manner in which the widower is also given rights over his late wife’s assets. The focus of the literature is to show how men share their property among themselves but do not talk about how men share women’s property among themselves.

Gray and Gulliver (1964) were among the exceptions that observed the Lobedu of the North-Eastern Transvaal. They observed that a deceased wife’s property was administered by the widower. Generally in many societies the widower was in addition given, without any reservations, another woman to marry who could be a young sister of the late wife (Bbuku, C 2011, pers. Comm., 23 March). In the Bemba culture this practice is called ukupyana.

Gray and Gulliver (1964, p. 21) described two similar processes among the Lobedu, Gusii and Shambala tribes which they named as ‘husband succession’ and ‘widow succession’ that worked like the ukupyana. The process of ‘husband succession’ was where a brother of the deceased assumed conjugal rights and duties just like a husband of that widow. The aim was to allow the living brother and the widow to bear children so that the deceased brother, who died without the wife bearing him children, can have
children while already in his death. The living brother performs conjugal functions and makes the brother’s widow conceive and bear children that are named after the late man like he was the real father. These children in this case would only be allowed to inherit their late father’s assets and not those of the foster father.

The ‘widow succession’ was where a brother of the deceased husband assumed the role for providing for the widow and the orphans so that the estates remained in the genitor’s name. This happened in a similar way and interpretation as in the Tonga ethnic group of Zambia where it was called kukona (inheriting). In some cases such heir would also inherit the name of the deceased which was called kulya zina (taking over the name). In some cases however another person who can even be a child of the deceased could take over the name of the deceased. The one that takes over the name is seen as the deceased and assumes the roles of the deceased. All these social processes indicate how social interaction was male-centrically oriented and thus gendered towards the male gender.

It was only among the Lozi people of the western part of Zambia where there was a contradictory process of inheritance. Among these people, children could claim inheritance of their deceased mother’s estates against their father (Radcliffe-Brown & Forde 1965; Women and Law in Southern Africa Research Project c. 1994).

The making of wills has been practiced for a long time in Zambia. According to Coissoró (1966) Wills were made among the ‘wealthy’ Tonga, but they were used to dispose property acquired through ‘own’ industry and ‘effort’ and not that acquired through ascription (Coissoró 1966, p. 96). The property acquired through family lineage belonged to the family referred to as basikamukowa in Tonga. The basikamukowa decided how to dispose of such property. Such property included land, cattle acquired through marriage which was called ciko and inherited property. Such kind of property could not be distributed through a personal Will. This was similar practice among the Shamba family of the Usambara regions of today Tanzania (Gray & Gulliver 1964). In that ethnic group, the family estate remained in the control of the genitor head of the family until his death. Although he could distribute his land to his sons they could not exercise control of their
portions as long as he lived. This means that family land and property remained for the family and only collective agreement could sanction a sale of any portion of such property. The proceeds from such transactions would be shared by the whole family.

In view of the foregoing, it can be assumed that the present day habit of property grabbing could be associated with the misinterpretation of the concept ‘basikamukowa’, as was in the case of the Tonga people, and the genitor, as was among the Shamba, who had sole rights over inheritance of the property. This is a misinterpretation because the old tradition recognised, though seemed not to uphold, private property, and the property was held on behalf of the extended family. The problem that should have been resolved in the present age was to separate extended family property from personal acquired property or private property. This separation was necessary because in that old society the extended family was the basic unit of consumption and production whilst in the modern time the nuclear family is the basic unit of resource.

2.3 **History of Codified Inheritance Law in Zambia**

The indigenous Zambian tribes had different cultural systems and practices that governed the property rights and inheritance between women, men, girls and boys. These customary practices continued undisrupted up until the colonial rule. The traditional system was vested in ‘traditional elders, leaders and chiefs’ that exercised authority in such matters (Mushota 2005, p. 1).

Whereas the Zambian tribes had varied forms of oral rules based on oracles and probably even in myth, the colonising England had its Common Law, which was also unwritten. Under the English Common Law, the Queen of England could at any time decree how the law could be interpreted and dispensed in the whole territory of England. This was the same among the Zambian tribes where family or tribal elders and chiefs or traditional courts could interpret and guide how the property of the family could be shared or distributed. The important element about this system was the reliance on the subjective penchant orientation of the authority holder.
The territory of England included its colonies. The English law was extended to the colonies including Zambia through the ‘Foreign Jurisdictions Acts, 1843 – 1890’ (Mushota 2005, p. 1). The applicability of the English law continued after independence. Some of the extension laws include the High Court Act, Chapter 27, Subordinate Courts Act, Chapter 28, the British (Extension) Act, Chapter 10 and The English Law (Extension of Application) Act, Chapter 11 of the Laws of Zambia. The common ground for all these laws is their subject: matrimonial matters. According to Mushota (2005, pp. 5, 12) Chapters 10 and 11 state the following:

The British (Extension) Act, Chapter 10 of the Laws of Zambia, Section 2:
The Acts of parliament of the United Kingdom set forth in the schedule shall be deemed to be of full force and effect within Zambia.

The English Law (Extension of Application) Act, Chapter 11 of the Laws of Zambia Section 2 provides as follows:

Subject to the provisions of the constitution of Zambia, and to any other written law
a. the Common Law, and
b. the doctrines of equality, and
c. the statutes which were in force in England on 17th August 1911 (being the commencement of the Northern Rhodesia Order – in – Council 1911) and
d. any statutes of later date than that mentioned in paragraph (c) in force in England, or which hereafter shall be applied thereto by any Act or otherwise, shall be in force in the Republic.

It follows that there is a schedule listing the Acts with full force and effect within Zambia. The question that begs answers is how many Zambians know these Acts? Further still it becomes a source of speculation how these Acts address Zambian traditions being borne of English traditions. Despite these fundamental questions the status quo has continued into the 2000 millennium. Whereas Zambia had enacted its own Marriage Act, up until 2007 there was no Matrimonial Causes Act forcing Zambian courts to turn to English Laws in particular to the Matrimonial Causes act 1973, to adjudicate matters relating to ‘custody and maintenance or financial provisions for the spouse of child of the family, or with settlement of property after divorce’ (Mushota 2005, p. 12).
The applicability of English borne laws is not the only matter about inheritance but also the duality of the systems and laws. Since establishment of colonial rule there has existed dual system of inheritance and law. Firstly that of African origin or the native law and secondly that of English origin or the received law (Mushota 2005; Mizinga 1990; Hay and Stichter 1995). The colonial law provided for separate law for Africans and for settlers (whites). This was the case under the British South African Company of Cecil Rhodes (1889 to 1924) and even under the direct British Colonial Office (1924 to 1964) rule. The purpose of having the dual system was for the African tribes and the whites to continue uninterrupted in their ways of property ownership and inheritance. This was probably also to avoid resentment especially from the African tribes. This was achieved by providing articles that recognised African systems. One such provision was Article 14 in the British South Africa Company which set out that the adjudicators were to observe the African customs and customary laws (Mushota 2005). It was in this spirit of duality that Coissoró (1966) observed that the law on inheritance, especially concerning making of the Will, was applied differently across the Zambian tribes by the colonial rulers. It was also noted by Coissoró (1966) that different Zambian tribes passed their property to their heirs through the use of testamentary Wills but even then it was only a few wealthy ones who did that.

The English law was administered through non-traditional courts while traditional leaders like village headpersons, tribal chiefs or the chiefs themselves administered the customary law in the courts. The colonial administration established Native and English courts. The Native courts came to be replaced by Local Courts governed by the Local Court Act, Chapter 29 but still carrying out the same function as its predecessor courts (Mushota 2005). The characteristic nature of the Local Courts is adjudication of matters before them according to unwritten customs.

In that regard the local justices were supposed to be knowledgeable about the customs of the people before that court. Mushota found that such knowledge was the criteria for selecting of the local court justices. The Justices were also at liberty to sit with an assessor or to consult books considered as ‘authority in African customary law’ (Mushota
2005, p. 11). The difficult presented by this arrangement is the inadequate customary knowledge. This is complicated further by intermarriages that occur across tribes. Further still the generations born from mixed ethnic marriages may have difficulties to align to one particular culture over time. In order to try to harmonise this and to find a symmetrical system that could be acceptable to all Zambian ethnic groups, it was provided in the Local Courts Act, chapter 29, Section 68 for the Chief Justice to ‘formulate rules of practice and procedures in administration of customary laws’ (Mushota 2005, p. 10). The inheritance law has to date not attained the characteristic that can be positively identified as Zambian borne and crafted.

2.4 The Intestate Succession Act

The Zambian Government enacted the Intestate Succession Act number 5 in 1989. This was a culmination of the campaign for protection of widows and children from property grabbers. The campaign that started in the 1970s, for a law to counter the traditional system was necessitated by rampant cases of property grabbing (Zambia Association for Research and Development 1996; Geisler 1987). The Government was compelled to task the Law Development Commission to carry out a survey with a view of documenting public views about the customary inheritance laws (Mushota 2005; Bbuku, C 2011, pers. Comm., 23 March). One major characteristic of the Intestate Succession Act was the prioritising of the widows and children as beneficiaries of a deceased family man’s estates. In Sections 5 and 10 the Act sets the proportions for sharing of the estates. In Section 5 it is stated as follows:

(1) Subject to sections eight, nine, ten and eleven the estate of an intestate shall be distributed as follows:

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;
(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the dependants, in equal shares:
Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and in that case, Part III of the Wills and Administration of Testate Estates Act shall apply, with the necessary changes, to the application.

(2) In respect of a minor, the mother, father or guardian shall hold his share of the estate in trust until he ceases to be a minor.

As a further way of embracing and cementing the African culture of polygamy and men’s public unpublished licence of having children outside marriage, Section 10 was provided for sharing of estates among such extra category of relations. This section provides as follows:

Notwithstanding section five where the intestate is survived by more than one widow or a child from any of them, then, each widow or her child or both of them shall be entitled-

(a) absolutely to the homestead property of the intestate; and

(b) in equal shares to the common property of the intestate.

The Intestate Succession Act was aimed at achieving uniformity of inheritance practice among all tribes of Zambia. This is stated in the preamble as follows:

An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a Will; and to provide for matters connected with or incidental to the foregoing.

This law also spread its applicability to the Africans who until then were excluded from it. Before that Africans who died intestate, their inheritance would have fallen under the customary law had the Act not been passed. Section 2 (1) states that:

Except to the extent specifically provided in this Act, this Act shall apply to all persons who are at their death domiciled in Zambia and shall apply only to a member of a community to which customary law would have applied if this Act had not been passed.
Whereas the Intestate Succession Law allowed Africans to use the written law for administration of estates of a person that dies intestate, it also recognised the customary property. According to this law customary property and institutional property is not to be devolved to private ownership. Section 2 (2) provides for this by stating that:

*This Act shall not apply to-

(a) land which at the time of death of the intestate had been acquired and was held under customary law;

(b) property which immediately before the death of the intestate was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property;

(c) family property.*

The Intestate Succession Act by differentially applying to individual, customary, institutional and family property implicitly recognised and separated own effort achieved and lineage ascribed property. The former property being largely found among the urbanites while the latter being common among rural communities. The law purposely espoused distribution of private property by the owner’s instituted arrangements; except that where one did not make that decision, the state and not the extended family would decide on their behalf. The idea for encouraging the owner to make a testamentary arrangement for distribution of their estates was borne from the knowledge that they would know the best suitable beneficiaries of their estates. In that way they would provide adequate provisions for their dependants thereby achieving the purpose of the law stated in its preamble.

Despite the well-intended purpose of the Intestate Succession Law it can be argued that it failed to achieve its aim. The aim of the Intestate law was to adequately address ‘the mischief arising from the “custom” of property grabbing by making specific provision for the widow’, children and dependants (Hay and Stichter 1995, p. 98). The analysis of Ndulo’s works by the Women and Law in Southern Africa Research Project (c. 1994) found no desire in the courts to engage customs and practice to steer them into new realities of urbanisation. It is argued that customary law and statutory law colluded in perpetuating property grabbing (Hay and Stichter 1995; Himonga c. 1989). It was also
identified that the modern law failed to align itself to the industrial environmental reality in which monetised socio-economics made people independent of traditional and communal property. The courts blindly stamped legality of customs in a society that had advanced beyond communal development into individual development. It was also observed that the courts were still applying communal property law where individual property law should have been applied.

The law of power of testamentary was instead required as it gave more rights and power to surviving spouses and children to retain that which had been given to them. It is from this background that the idea to conduct a study on what causes seldom use of the Wills by women and men in the urban civil service in making provision for passing on of their estates to whom they pleased evolved.

2.5 **The Wills and Administration of Testate Estate Act**

The historical background of the Will and Administration of Testate Estate law in Zambia is the same with its sister law, the Intestate Succession law. It is a received law based on English’s 1837 Wills Law (Mushota 2005; Hay and Stichter 1995). The Wills and Administration of Testate Estate Act was introduced during the colonial rule, and at the time it applied only to the white settlers. However, some Africans that started acquiring some wealth found the law to be good even for the indigenous Zambians. In response to this demand it was decided that the Wills’ law be applied differently among the different Zambian ethnic groups by the colonial Government (Coissoró 1966).

The enactment of the Wills and Administration of Testate Act number 6, in 1989 did not repeal the 1837 Wills Act of England, but domesticated it into the Zambian law replete with distortions. Section 70 of the Act in applying it to Zambians provided that: *From the commencement of this Act, the Wills Act, 1837, of the United Kingdom shall cease to apply to Zambia*. The purpose of this law was to provide for legal authority with which individuals would exercise their testamentary right to make provisions for their dependants. It was to simplify the procedure for making and administering the Wills.
This law was meant to provide guidelines for making Wills by Zambians. Notable in its framing is the gender neutral tone of the preamble. It is stated in the preamble as follows:

*An Act to simplify the law governing the making of wills; to provide for adequate financial and other provisions to be made for dependants in a Will; to provide for the administration of estates of persons dying having made a valid will; and to provide for matters connected with or incidental to the foregoing.*

The Wills and administration of Testate Estates Act was in consonance with the Intestate Succession Act in recognition and separation of traditional and family property from individual property. This was made by the provision set out in Section 2 which states that:

*This Act shall not apply to-*

(a) land which at the death of the testator had been acquired and was held under customary law and which under that law could not be disposed of by will;

(b) property which at the death of the testator was institutionalized property of a chieftainship and had been acquired and was being held as part of chieftainship property.

This law like the Intestate law separated property generally found in rural areas from that found in urban areas. Urbanisation led people to migrate from rural areas where they had ascribed property like land and acquired their own land in new areas of settlement. Some people built houses in urban areas on plots bought from civic authorities. These properties were contested by nuclear family members to belong to them and that they should inherit them upon the death of the owner. The point of contest was that the extended family members had no material input in the realisation of such property. The extended family members’ views were that the property owner, who in majority of cases was a man, was their son, a nephew or a relative and that according to their custom they were the rightful beneficiaries. By implication of Section 2 of this Act, the Wills law was to apply to such property that individuals acquired out of their own efforts. Property owners were provided with a means to make arrangements for persons of their choice to inherit their property following their death.
The introduction of this law formalised the recognition of the two categories of property: private and extended family property. The action of delineating and separating private and extended family property was in direct conflict with the customary system that either purposefully or ignorantly blurred this division. It also means that the new law directed itself to recognising achievement through individual effort which aspect was not recognised in the customary system. In the case of the customary system it was ascription and blood kinship that was important. Therefore property inheritance was determined through blood kinship. It can be concluded from the foregoing that the individual property rights law came into conflict with kinship property inheritance (Bbuku C 2011, pers. Comm., 23 March).

2.6 The Public Service Pensions Act and other Pensions Schemes

The Public Service Pensions Act is the parent law for payment of pensions in Zambia’s public service. Other laws such as the Zambia National Provident Fund (NPF), National Pension Scheme Authority (NAPSA) Act and Workers Compensation Acts draw their ethical practice from this parent law. Their administration of benefits to pensioners and contributing members is not expected to be in conflict with this parent law.

The Zambia National Provident Fund Act was repealed in the year 2000 and replaced by the National Pension Scheme Authority Act. However, both Acts are discussed in order to understand the development of inheritance statutory laws of Zambia.

The review of the Public Service Pensions, the Zambia National Provident Fund, Workers Compensation Fund, National Pension Scheme Authority and the Widows and Orphans Pensions Acts revealed this common methodology of making payments of pensions and emoluments. They all are not in conflict concerning administration of pensions after death of the pensioner. The specific provisions of these pieces of law are discussed beginning with the parent law, which is the Public Service Pensions Act. This is followed by the analysis of the Zambia National Provident Fund and the Workers Compensation Acts.
The pension payments for the surviving family members after the death of a pensioner are provided for in Part IX and in the Second Schedule of the Public Service Pensions Act. Sections 42 – 44 provide specific administrative tools to use in deciding the recipient of the pension or emoluments of the deceased officer. These tools represent the left Will and the Intestate Succession Act clauses. The same tools are provided for in sub-section (4) of section 9 of the National Pension Scheme Act. The Second Schedule of the Public Service Pensions Act makes provision for the payment of pensions and other emoluments to a surviving spouses and children when the officer dies with ten years or more of pension service.

A similar provision is made in the National Pension Scheme Act under part V. These clauses are there to allow officers and contributors that die before attaining pensionable age or service to be able to be paid benefits commensurate to the length of their service. The laid down administrative procedures for paying out a dead pensioners benefits give the option to make payments according to the way the pensioner has ordered through a Will. But being cognisant that others may not make Wills there has been provided a second tool, that which the State determines as being closer to fairness, the Intestate Succession distribution percentages.

The provisions set out in these sections encourage individuals to have written Wills. It is expected by these provisions that pensions of deceased public service workers will be paid out according to the Wills. This means that both the civil service and the private systems are well suited organisation in which individuals can use the Wills to distribute their estates. Effective exploitation of the provisions through policy education of employees has the potential to influence people with pensionable service to adopt the use of Wills. The sections 42 – 44 of the Public Service Pensions Act provide that payments of pensions and emoluments shall be made in accordance with:

(a) the will left by the deceased; or

(b) where the deceased has not left a will, the mode of distribution specified in the Intestate Succession Act, 1989.
Section 9 (4) of the National Pension Scheme Act state that:

*On the death of a member, the Authority shall pay the pension benefits due to the member in accordance with the provisions of the Intestate Succession Act and the Wills and Administration of Testate Estates Act.*

The language used in phrasing these pieces of law is sex neutral. It shows no bias towards men or women. It employs the use of the term spouse as opposed to widow or widower. In this way this law has catered for both women and men and they can all use it without any misunderstanding and doubts. It isolates itself from other laws that are sexed and promoting either men or women.

Having looked at the parent pension law, now it is time to take a look at the Zambia National Provident Fund, the National Pension Scheme and the Workers Compensation Acts. Upon reviewing these laws one finds that they do not explicitly put members of the extended family as beneficiaries of pensions and payments from these schemes. The Zambia National Provident Fund Act goes further to define a member’s benefits as not being part of the deceased’s estate. But that these benefits shall be treated separate from the members other estates.

This is to allow it to be paid to either the nominated member or the spouse or children before any consideration can be made about any extended family member. The National Pension Scheme Act confirms this idea in section 34 sub-section (3) by defining the next of kin as the surviving spouse. The parents of the deceased are only considered as next of kin when the deceased was unmarried.

However, it is not clear whether people know which property should be shared by the extended family members and that which should belong to the nominated member as provided for by the Zambia National Provident Fund Act. Whereas the Zambia National Provident Fund Act emphasises the recognition of a nominee, the Workers Compensation Fund Act focuses on the widow, widower and children. The Zambia National Pension Scheme Act does not contract the Zambia Nation Provident Fund Act in that it recognises a Will. These laws seem to promote the nuclear family. They lay emphasis on the widow,
widower, dependant and a nominated family member. The Zambia National Provident Fund Act state under section 62 (1) that:

If a worker who is in receipt of a pension under section fifty-nine, or who would have been entitled to a pension under that section but for his death, dies not as the result of the accident in respect of which he was receiving or would have been entitled to receive such pension, the widow or invalid widower of such deceased worker, if married to or living with such worker, as the case may be at the time of the accident in respect of which he was receiving a pension and dependent on him at the time of his death, shall be paid a monthly pension ... plus a monthly allowance for any dependent children of such deceased worker who were born or adopted before the time accident, or born within ten months after the time of such accident.

Similarly the National Pension Scheme Authority Act Sections 29 and 30 provide for the conditions under which the survivor’s benefits shall be paid to a member of the family or dependant or a nominated person. These sections state as follows:

Section 29 states that
Subject to this Act, a survivor’s benefits shall be paid to a member of the family or a dependant if at any time of death the member-
(a) was in receipt of a retirement pension or an invalidity pension;
(b) would have been entitled to an invalidity pension for permanent invalidity at the time of death; or
(c) had reached pensionable age and was entitled to a retirement benefit and had made a claim to such benefit.

Section 30 states that:
The following persons shall be regarded as family dependants for the purpose of section twenty-nine:
(a) a surviving spouse of the deceased member;
(b) a child of the deceased member; or
(c) such other persons as may be entitled to benefit under the Intestate Succession Act or Wills and Administration of Testate Estates Act or as nominated by the member.

The provision made in Section 30 is similar to the provision stipulated in Section 9(4) of the same Act. The consistence in the provision of the law shows the commitment to smoothening of the inheritance process after the death of the property owner. The section states as follows:
On the death of the member, the Authority shall pay the pension benefits due to the member in accordance with the provisions of the Intestate Succession Act and the Wills and Administration of Testate Estate Act.

The criteria for one to follow in making a nomination are not specified in both the Zambia National Provident Fund Act and the National Pension Scheme Authority Act. But it could be understood that a testamentary Will that is recognised by these laws is one method of nominating a beneficiary. This could be the case because the pensions’ parent law, Public Service Pensions Act, like these two Acts provides for a Will as a tool that should be used to identify a beneficiary. It can be seen that the provision of the pension law and the two schemes’ law, applicable to majority employed workers in Zambia including civil servants, have provisions for them to have testamentary Wills.

Although the laws are so poised to better the inheritance process in Zambia it remains to be established how knowledgeable people are about all these provisions. People may not make appointments or nominations because they do not know anything about such legal provisions or even how to use the same provisions. Some people may know about these provisions but have little or inaccurate interpretation such as associating a nominee to an administrator. Therefore it is important to have legal education for the employees about the legal provisions that are available for their future use and benefit.

The following are the provisions according to section 28 of the Zambia National Provident Fund Act:

28 (2) A Member may at any time, by notice in writing delivered to the Director, nominate any members of his family to receive such proportions of the benefits payable on his death as he may specify.

(3) A nomination made under sub-section (2) or the marriage of a Member shall be deemed to revoke any prior nomination made by the Member under that sub-section.

(4) On the death of a Member, the benefit in relation to that Member shall not be a part of the estate of that Member but shall be paid to any person nominated by the Member under sub-section (2).

According to this law the widow or widower may receive the benefits under sub-section (5) when there is no effective nomination of a beneficiary at the time the contributor dies.
Seen from the perspective of this study, this piece of law aims at encouraging formally employed wage earners that are registered with this pension scheme to make written Wills through which they can make their nominations. Sub-section (5) states that:

Where, on the death of a member, there exists or remains no effective nomination under sub-section (2), the Director shall
(a) Pay benefits to any widow or widower of the Member with whom at the time of the Member's death was cohabiting.

It is also important to note the categorisation, in sub-section (4), of the benefits from this fund as being independent of other estates of the contributor. Perhaps a study could be carried out to investigate claims made under this law to ascertain whether administrators appointed after the death of contributing members have been the ones paid or not.

The Widows and Orphans Pension Act is a law specifically made to protect widows and orphans and provide for payment of benefits to them after the death of the husband and father of the children. Because it is providing for the widows and orphans it means men are the wage earners, or bread winners and estate owners. Income and property have been gendered to belong to the male sex and not the female sex. Women in this case are not in the equation of income earning or property ownership. The female sex must take over when men die. Whether, women have income and property or not, this law was not intended to make provisions for administration of that property. But it is providing for the administration of the deceased man’s estate in respect to his surviving spouse and children. In this case therefore the man is the pension contributor and the woman is the pension beneficiary.

With a law drawn to manage issues of one human sex it would be expected to have another law for the other human sex. In this case the law for the female sex is available but not for the male sex. Where society feels this one law for the female sex is sufficient it is an indication of the social acceptance that one sex, male, should be empowered first before they can prepare, in death, for the other sex, female.
If that be the underlying idea of the social system, then it communicates a message to women not to work hard or be given opportunities that would enable them to create their own wealth but to wait until their husbands die so that they inherit the property. In so doing, society is legitimatising the feminisation of poverty. Property inheritance is indeed a gender issue as the majority of women have no property. The provisions set out make the property owners, males, become anxious from suspicion of schemes to kill their husbands or in some cases rejoice at the death of their husband caused by any other causes. Certainly there is no evidence that was found during this study to the effect that women do these things but it is the legal provisions that are indirectly saying so.

The other point about the Widows and Orphans Pension Act is the incompleteness in that it is not providing for the administration of the women’s property after death. This law does not guide on who should inherit their inherited property after the death of a woman. This may be the society’s suggestion that it is not important to consider the property of women or society is just not prepared to see women own property at any level. One is bound to ask these questions because the law seems to end abruptly at the death of a husband and the widow inheriting property left by the deceased husband.

The biasness of this law becomes a gender issue because it espouses that women are not expected to own property. This is clear in its failure to make provisions to guide how property owned by women would be inherited. It is also clear from the biasness of the title of the Act, which does not include widowers. However, it is clear that women have started owning property and society need to recognise and accept this fact. Society must further make laws that recognise, regulate and guide the inheritance process of women’s property.

The provision of the Widows and Orphans Pension Act without a Widower’s Act may be a classic example of laws that discriminate against one sex. There is no law to use in respect of widowers. Whereas it specifically states that a widow that remarry will cease to receive the pensions of the deceased husband there is no law to guide on what should happen should a widower that is receiving the pension of the deceased wife remarries. In
order for the law not only to be gender sensitive but also fair, it must cover both men and women. But as things stand in respect of wording used in this law of pensions, there is this glaring gap, where women issues are partially addressed and those of men are completely ignored. The Widows and Orphans Pension Act state in section 20 that:

(1) Where a beneficiary consists of the widow of a contributor, the pension payable to such beneficiary shall, subject to any deductions in respect of partial forfeitures under sub-section (20) of section fifteen be paid to her and shall cease on her death, bankruptcy or remarriage or on the forfeiture of the whole of such pension in accordance with the provisions of that subsection.

(2) If on such pension ceasing as aforesaid there are no children of the marriage of such widow with the contributor living and of pensionable age, such beneficiaries shall be deemed to cease to exist and the pension payable to it shall lapse.

2.7 **The Administrator**

The Intestate Succession and the Wills and Administration of Testate Estates Acts provide for the appointment of an administrator in Parts iii and Section 5 respectively. These Acts also define, in their Sections 3 respectively, the administrator as a *person to whom a grant of letters of administration has been made and includes the Administrator – General*. These pieces of law further outline the powers and duties of the administrator. Simply put, the administrator’s duties and powers is to deliver to the beneficiaries their rightful shares as provided for by the law or as stated by the Will. Serve that if the distribution in the Will have been contested the administrator will have to disburse the portions as would be ruled by an appropriate court of law.

When an administrator is appointed in the case of intestate property, a grant of letters of administration is given by a competent court of law. In the case of a testate property, the maker of the Will may have appointed in the Will the administrator. In such a case such an administrator is called an ‘executor’. In Part V of the Wills and Administration of Testate Estates Act it is given that the executor will be granted a probate to as authority to proceed with their given mandate.
The appointment of an Administrator has been abused by some people that have played this role. The Legal Resource Foundation has dealt with several cases of abuse of the powers and duties of the administrator. The Young Women Christian Association (YWCA) Copperbelt regional coordinator, Jurita Mutale (Legal Resources Foundation 2007, p. 7) lamented that:

*It would be better if the local courts came up with eligibility standard of a person to be appointed as an administrator to try and solve the problem of mismanaging of funds meant for a deceased person’s children.*

The Foundation in 2007 October reported three cases where the administrators mismanaged the property of the deceased. The cases included not giving correct portions of inheritance to the beneficiaries as provided for by law, threatening to throw orphans out of the house and beating of orphans when they collect rentals accrued on their late parent’s house. In Chipata a widow recovered her inheritance which had been misappropriated by the administrator, through the help of the Legal Resource Foundation (Banda 2009 cited in Legal Resource Foundation 2009).

The courts also accept these actions because of recognition of customary law. Courts will only refuse to grant acts deemed ‘*contrary to natural justice*’ (Hay and Stichter 1995, p. 96). The criterion for deciding what action constitutes breach of natural justice is not defined (Mushota 2005) and is left to the presiding judge to determine. The determining factor is the penchant of the presiding magistrate or local court Judge. This arrangement leaves room for misinterpretations that has led to collusion of customary law and Intestate Succession law. The law, in its collusion, has been gendered – it has been observed that the law is biased against women and that it is promoting patriarchal beliefs. This was referred to by Varga (2006, p. 3) as legal ‘*loopholes [and] corruption*’.

Since Intestate Succession law cannot prescribe on behalf of the parties on who can be administrator, whether from the deceased’s side or from the surviving spouse’s side, administrators seem to mostly come from the deceased’s family side. In such cases the surviving spouse tends to fear to contest the decisions made by the administrator and their family (Hay and Stichter 1995; Women and Law in Southern Africa Research Project c.
1994). The administrator thus abuses the estates at the expense of the surviving spouse and children. The abuse comes as a result of confusion of the duties of the administrator who is seen in the eyes of customary inheritance system. In the customary system the heir steps into the shoes of the deceased. The case observed in Lusaka of ‘Elina Tembo vs Asani Tembo’, like those cases handled by the Legal Resources Foundation earlier highlighted, illustrates this point (Women and Law in Southern Africa Research Project c. 1994, p. 71). In this case the administrator spent money from the estate without restraint and ‘wanted to occupy the house belonging to the deceased [which moves were interpreted to mean intentions] to “inherit” the deceased’s wife’ (Women and Law in Southern Africa Research Project c. 1994, p. 71).

The women movements and women activist have advanced the agenda to have justice dispensers empowered so that they guide administrators properly. These organisations have in the recent times embarked on engaging Local Court Justices and traditional leaders to educate them on the rights of women and the evils of customary practices (ZARD & SARDC 2005; Bbuku, C 2011, pers, Comm., 23 March). It is hoped that with the system responsible for settling inheritance disputes adopting a clear just modus operandi administrators will not abuse their authority.

2.8 Focus of studies in Family Law in Zambia
Mizinga Moono (1990), and Munalula and Mwenda (in Hay and Stichter 1995) did investigate how customary and statutory laws evolved. They also assessed how the customary law colluded with the Intestate Succession Act to discriminate against widows in favour of patriarchal males. Coissoró (1966) also studied inheritance practices among some tribes of Zambia including the Tonga of southern province. Although Coissoró (1966, p. 96) explains that wills were used among the ‘wealthy’ Tonga, the study was not about the extent of making Wills or hindrances to making the Wills among Zambians. Coissoró (1966) only outlined how the colonial administration introduced the Wills’ law on a model that differentiated its applications according to the area and the custom of the local people.
The Choma-Tonga and Gwembe-Tonga Native Authority Rules can illustrate the differentiated application of the law on making of wills. The Choma-Tonga Native Authority Rule did not include the value levels of property that could validate a Will. For example there was a £20 property value level included upon which a Will could be considered valid among the Gwembe-Tonga. The implication was that, a Will written among the Gwembe-Tonga, to dispose the total property worth £20 or less was invalidated upon evaluation and confirmation that the property covered in that will amounted to £20 or less. Coissoró (1996, p. 96) quotes these pieces of laws as follows:

**Choma-Tonga Native Authority Rule**

(a) **Powers of disposition of the testator sub-rule (iii) of the wills rule lays down that:**

if a person belonging to a village in the Choma-Tonga Area has made a Will with the required signatures of witnesses and deposited and registered it in accordance with Sub-rule (iv) of this Rule, and has directed therein that any of his property be disposed of on his death in some manner other than by native custom, then such direction shall be carried out except in respect of the following:

Property acquired by the testator by virtue of his tribal or clan affinities and not by his own effort.

**Gwembe-Tonga Native Authority Rule**

if a person belonging to a village in the Choma-Tonga Area has made a Will with the required signatures of witnesses and deposited and registered it in accordance with Sub-rule (iv) of this Rule, and has directed therein that any of his property be disposed of on his death in some manner other than by native custom, if the total value of his estate is greater than £20 but not otherwise, such directions shall be carried out except in respect of the following:

(a) Property worth £20 together with one quarter of the value of the remainder of the estate; and

(b) Property acquired by the testator by virtue of his tribal or clan affinities and not by his own effort.

Himonga’s (c. 1989, p. 163) paper on *The law of succession and inheritance in Zambia and the proposed reform* analysed factors leading to introduction of the Intestate Succession Act and how it was expected to work under customary law environment. The paper was written at the time of debating about the enacting of the law of inheritance suitable for modern monetised socio-economic life. It was argued that the property was
more and more less being acquired through extended family system but on nuclear family level. It was argued that property was jointly acquired through efforts of men and women wage earners that pooled their incomes together to create nuclear family wealth.

Another contribution in the study of inheritance in Zambia was made by Mushota (2005) in her work ‘Family law in Zambia: Cases and materials’. This study did not study factors that caused Zambians or any category of Zambian to make or not make a Will. The study did not also focus on finding out the trends for making testamentary Wills in Zambia.

In this work she looked at the development of the family law which included the Succession and Wills laws. She looked at the provisions with which the received laws were domesticated to apply to Zambians and how they became repealed to be completely Zambian laws. It is clear from the discourse of her work that the family law is still not yet fully developed in Zambia. By the time she was writing her book in 2005, Zambia was still using the British Matrimonial Causes Act of 1973 to adjudicate matters of divorce (Mushota 2005, p. 12).

She further identified factors that affected changes to the property rights at the family level. One such broad factor was urbanisation which was also identified by Himonga (c. 1989). Urbanisation fundamentally changed people’s life styles and property acquisition processes. The life style became more and more individualistic as opposed to communal traditional life of pre-industrial society. This individualistic new life style led to the transformation of marriage from familial to that of personal preference based on ones’ love choice. The family became disempowered in determining persons to marry into the family. This created a conflict in the traditional family system and those that benefited from it did not favour the new culture. The urban thinking was that of individualistic property ownership, developed from the political administrations system that encouraged private ownership of assets and businesses. She further looked at the contribution of the court system through judgements made in cases before courts. These precedence judgements became building blocks for the development of the property rights and the family law.
Embedded in the urbanisation factors are a mixture of different cultures and the dynamic socio-economic system. Culture is part of every society, as it shapes the way things are done and the understanding of why things are done that way. The urban area became a cosmopolitan where acculturation produced new thinking of nuclear family as opposed to the extended family. This factor was also identified by Coissoró (1996) among the Tonga people of the southern part of Zambia. The socio-economic environment of society had fundamentally changed and came into conflict with proponent of the traditional inheritance system which principally remained unchanged. This conflict made the traditionalists ‘disinherited’ (Mushota 2005, p. 422). Property acquired independent of the extended family input was considered to be inappropriate to be inherited by the extended family members of the husband at the expense of the nuclear family with whose effort the estate was realised (Coissoró 1996). The disinherited adopted the hostile course of action. The hostile coarse included but not exclusively the use of force to inherit property and use of threats of all kinds to surviving family members that refuse to allow them inherit what they perceived as their right. It is these categories of actions that commonly became called ‘property grabbing’ by many writers including Mushota (2005), Hay and Stichter (1995) and Women and Law in Southern Africa Research Project (c. 1994).

It has already been discussed that although Himonga’s study identified few cases where wills were used, the focus was not to study prevalence of making and leaving wills nor beliefs to making and leaving wills. In fact Himonga confirms that there is no empirical data to show the execution of wills as testamentary disposition of wealth (c. 1989, p.162).

There is no study so far that has been conducted in Zambia neither to determine the extent of the use of power of testacy nor to establish the reasons why few Wills are executed. However, Himonga (c. 1989) does state some reasons for intestate, but does not state studies conducted showing empirical evidence. Without empirical evidence the reasons advanced remain as claims. The making of Wills in Zambia lack empirical evidence suggesting that the subject was not studied.
In ‘the money economy’, like ours, modern Zambians have started acquiring property by their own industry and achievement, unlike in the preindustrial period when people possessed communal property (Hay and Stichter 1995, p. 99; Women and Law in Southern Africa Research Project c. 1994, p. 70). This was the flux situation Mizinga Moono (1990) and Coissoró (1966) described among the Tonga people of southern Zambia, where some contested applicability of customary inheritance practices in their changed times. Mizinga Moono (1990) observed that people wanted a system that would allow them to pass on their estates to the people of their choice, those that directly contributed to acquiring of the concerned property. They were discontented with the rigid extended family system where people inherited property which they did not know how it was acquired. At that time, the Intestate Succession Act’s provisions of 50% to children and 20% to the widow were seen as a viable alternative (Section 5). But because of its proviso that property held under customary rights such as land and family property will not to be included in the distribution, individuals sought own property independent of customary rights. It was the property acquired through private industry that the Tonga wanted to be left with their nuclear family after their death (Mizinga Moono 1990). It is this particular property that is focussed upon when making a Will.

Although gender theories are abounding, literature on intestate succession does not employ theories to explain inheritance behaviour. However it has been endeavoured in this study to integrate theory to explain the phenomena of inheritance.
CHAPTER THREE

METHODOLOGY

3.0 Research Design

A qualitative research design was used in this study. Unlike quantitative methods, qualitative research methodology is based on the naturalistic approach because they are carried out in real-life settings. Furthermore, qualitative studies do not seek to manipulate the phenomenon of interest but seeks to understand the phenomenon under study. Qualitative approach was favoured in this study as it would help to explore and describe factors that cause intestacy. Interviews and sometimes observations are dominant tools in the naturalistic paradigm (Blaikie 2000; Bryman 2008).

Qualitative research is not only exploratory in nature and open in direction (Neuman 1997; Basavanthappa 2007), but it is also informed by data. Being exploratory in nature it seeks to produce information about a phenomenon in which little is known. In this case there is very little known about factors that cause intestacy. As such this study was seeking to explore and describe the factors that cause intestacy.

More so that qualitative approaches help to provide missing social knowledge by focusing on a part of society or part of a social process of which there is little known as it answer the question ‘what’. Qualitative research primarily draws its impetus from social policy or a simple question. Since social policy is related to time and space it is subject to change and modification (Layder 1993). Qualitative approach also helps to unravel the social ‘realities’ influencing decision making about making a written or oral will (Polit & Hungler 1995). In addition, qualitative approach leads to continuous search for new contextualised meanings. As such it provides a means through which such continuous knowledge search processes can be carried out (Bryman 2008).
3.1 **Study Site and Study Population**

The study was carried out in three selected districts of Zambia, namely: Lusaka, Kafue and Kabwe. The target population for this study were civil servants. Civil servants were chosen for easy of identification and accessibility. Secondly, civil servants have a steady income which they can use to acquire private property as opposed to dependency on family or communal property. Thirdly civil servants are expected to know government policies, including the inheritance legal provisions that government has put in place.

The participants were drawn from Ministry of Education, Science, Vocational Training and Early Education; Ministry of Transport, Works, Supply and Communication; Ministry of Tourism and Arts; Ministry of Commerce, Trade and Industry and the Ministry of Health. The Ministry of Education, Science, Vocational Training and Early Education is the only ministry under study that is decentralised up to the district level. This allowed for participants to be drawn from three districts of Lusaka, Kafue and Kabwe. As for the other ministries, the participants were drawn from their respective Ministry Headquarters in Lusaka only. Statistics on registered Wills were obtained from the Wills register at the High Court in Lusaka.

3.2 **Sampling Technique**

Whereas as simple random sampling was used to select ministries from a list of Zambian Government Ministries, convenient sampling was used to select the three districts (Lusaka, Kafue and Kabwe) from the Ministry of Education, Science, Vocational Training and Early Education. This Ministry is decentralised up to the district level. The decentralisation allowed the participation of participants from the districts under this Ministry.

The participants were purposively selected from all the study Ministries. Unlike quantitative methods, qualitative studies use non-probability methods as opposed to probability sampling used in quantitative studies. Purposive and convenient sampling techniques are some of the commonly used techniques in qualitative studies. Purposive sampling was favoured as participants are selected based on some pre-defined
characteristics that make them the holders of the data needed for the study (Maree 2010; Creswell 2007). Simple random sampling was only used to identify the ministries.

3.3 **Sample Size**
The sample size in this study was thirty six participants comprising of eighteen men and eighteen women. Qualitative studies usually use small sample sizes as compared to quantitative studies. In quantitative studies, researches normally plan in advance the number of respondents who should participate in the study. In qualitative studies, the sample size is guided by the data. Qualitative researchers use the principle of saturation or data adequacy to determine the sample size (Polit and Beck 2012). Data saturation is said to take place when themes and categories in the data become repetitive and redundant, and no new information can be collected by further data collection (Creswell 2007, p. 240; Bryman 2008, p. 700). Qualitative studies also tend to generate a lot of data hence the use of small samples.

3.4 **Gaining Entry into the Research Sites**
Entry to the research sites was possible based on the letter that was provided by the Research Ethics Committee of the University of Zambia. Entry to the High Court was granted through the Office of the High Court Registrar. Attached at Appendix A is a letter from the University of Zambia Ethics Committee. Permission to enter the ministries’ study sites was done through the respective offices of the Human Resources Management, except for the Ministry of Commerce, Trade and Industry, where clearance was done through the Office of the Permanent Secretary.

As earlier explained, the Ministry of Education, Science, Vocational Training and Early Education is decentralised up to the District level, the Human Resource Manager (HRM) gave the researcher an introductory letter to take to the three selected districts of the Ministry. Attached at Appendix B is a copy of the introductory letter that the Human Resource Management gave to the researcher, to take to the respective districts.
Authorisation for entry into the Ministry of Transport, Works, Supply and Communication, was endorsed on the researchers’ Approval of Research Proposal letter from the University of Zambia. See Appendix C.

Equally, the researcher was referred to the Permanent Secretary by the Human Resource Officer at the Ministry of Commerce, Trade and Industry, who advised the researcher to put his intent of conducting a research at the Ministry in writing and give any relevant information for necessary administrative purposes. This was in addition to the Student Introductory Letter that the student had produced earlier. Having fulfilled the requirements the researcher was authorised to proceed with the interviews. See Appendix D for a copy of the letter.

Entry to the Ministry of Health and Ministry of Tourism and Arts was granted based on the Students’ Introduction letter.

3.5 The interview Process

All interviews were held in the participants’ work places. The interviews took the form of a conversation. The interviews helped to explore the views and ideas, beliefs and attitudes of the participants regarding intestacy.

The process of ‘carrying the interviews’ (Basavanthappa 2007, p. 312) involved asking questions and allowing the participant to respond to the question. All participants were asked same questions to avoid response error like advised by Bryman (2008).

The interviews started by the researcher introducing himself, and thanking the participants for agreeing to participate in the study. This was followed by an explanation of the rights of the participants and the purpose of the study. The participants were informed that they were free to withdraw from the study any time they felt like without giving any reasons. It was also explained that the information obtained was for academic
purposes only and anonymity was assured as no names were going to be made known in
the report.

The procedure for data collection was then explained to the participants. It was explained
that the interview would be audio-recorded and written notes would be made. It was
explained that audio-recording would help to listen to the interview again latter and that
would help in making the transcription of the interview easy. Permission to audio-record
the interviewee was then sought. Some participants agreed to have their interviews audio-
recorded while others did not want their interviews to be audio-recorded but opted for
interview notes only to be taken. These views were respected. Once the participant
agreed to participate, he/she was requested to sign a consent letter. One copy remained
with the participant, and the other copy remained with the researcher. It was only after
these formalities were done that the interviews commenced. See Appendix E for a copy
of the consent letter.

Notes were taken as the participant spoke. Where the participant had agreed to have a
recorded interview, the interviews were recorded and interview notes taken. The data
were recorded in raw form. No research assistants were employed in this whole process,
the researcher conducted the interviews in person.

The interview process did not rigidly follow the interview guide. When it was noticed
that the response was not clear, the question could be rephrased or explained. New
questions were also asked to make follow-up on issues raised in the participant’s
response. This flexibility led to collection of deep and wide range of data. Opportunity
questions however did not derail the whole interview process. After exploring an issue,
the interview would again focus on the questions on the interview guide.

The interviewees were thanked for participation in the study at the end of the interviews.
They were again reassured of the protection of their rights and that the information shared
was going to be treated confidentially and used purely for academic purposes only. They
were assured that their identity would be withheld. All the interviews lasted between twenty to forty minutes.

3.6 **Data Collection**

The study collected both primary and secondary data. Secondary data were collected through the review of the Wills register at the High Court in Lusaka. Primary data were collected by use of personal interviews. An unstructured interview guide (attached at Appendix F), was used to collect data.

Interviews are a valuable source of ‘rich descriptive data’ which helps to understand the participant’s construction of knowledge and social reality (Maree 2012, p. 82). The use of in-depth interviews provided flexibility to the interviewees by not limiting them on the way of answering. The interviewer also had the opportunity to receive additional information which may not have been captured in structured interviews. Additional data about economic and cultural meanings were also gathered. The characteristic of freedom of response in personal interviews proved effective in allowing participants’ own interpretations and meanings to be captured.

The qualitative approach was suitable for this study, as it was seeking to ‘understand social actors’ motives through their own narrations. According to Marshall (1996, p. 524) qualitative approach does not seek inference to the large population but wants to generate ‘improved understanding of complex human issues’. Employed in this way qualitative approach was suited to ‘develop a well-grounded mental picture’ (Neuman 1997, p. 20) of the observed phenomenon as being explained by the social actors.

Another advantage of the interviews lie in the ability of the interviewer to adjust and change the interview mode to remove interviewee suspicions, fears and misunderstandings (Basavanthappa 2007). In this way, interviews ground interpretation of inheritance behaviour in the social meanings of actors. This makes possible understanding of the behaviour of making testamentary Wills. Such understanding is important, just like other sociological explanations of social facts make understanding of
social phenomena possible. Since social facts are external coercive forces ratified by society for social control, testamentary behaviour can also be classified as a social fact. As a social fact, therefore, testamentary behaviour requires to be explained.

3.7 Data Analysis

Data collection and data analysis in qualitative studies is ‘an on-going iterative (non-linear) process, and not merely a number of successive steps’ (Maree, 2010, p. 99). While keeping the research questions in mind, I often went back to the original field notes and verify the data. Where it was not clear I went back to the participant for clarification and even collect additional information. The former helped to achieve confirmability. This process continued until saturation was reached. This makes the data collection and analysis not only to be intertwined but also ensures credibility and trustworthiness of data.

Descriptive statistics was used to analyse quantitative data, while qualitative data were analysed qualitatively. By nature, qualitative data tend to be bulky and length. Data analysis started with data editing. Editing was done in the field and through the whole data analysis process. Editing involved checking that there were answers to all questions. Data were further checked for accuracy and uniformity. Accuracy and consistence were checked during interviews. Some questions in the interviews referred to participant’s demographic details. Participants were expected to explain, for example the cultural inheritance practice, as practiced in their stated ethnic group. The editing also was done during transcription when the interview notes and interview audio record were manually written verbatim to make interview transcripts.

First and foremost I had to read through the hand written notes and listen to the audiotapes. This was followed by transcribing the raw data verbatim. Transcribing is the process of making a verbatim written copy of the audio recorded speech or discussion. This process was followed by reading through the transcripts, so as to understand the data.
The third step was to identify the structure of the data collected. This step involved relating data to the questions under investigation. These included intestacy factors about written Wills and knowledge of the Wills and Administration of Testate Estates Law. The step helped to put together, the questions and objectives, of the study and grouped them into large data sets. This step was important as the coding of data was done at this stage. The coded data were then grouped and developed into themes and sub-themes or categories and sub-categories.

After data were identified and grouped under the research questions and objectives, data were further classified according to their common characteristics. In this case the characteristics are the social descriptions of the participants’ experiences about inheritance. These classifications helped to clarify the themes and sub-themes that were developed.

Data coding was done by carefully reading through the transcribed data and extracting meaningful analytical units. These units helped to identify data and allocate it to a theme. Meanings were derived from analysis of the data under the themes. According to Silverman (1993, p. 19 in Coffey & Atkinson 1996, p. 5) qualitative data analysis is not concerned with quantification but is concerned with ‘asking how principals attach meanings to their activities and problems’. The problems are contextualised in everyday realities and meanings of the social worlds and that of the social actors (Coffey & Atkinson 1996; Polit & Hungler 1995). Qualitative data analysis therefore is a process of reporting as accurately as possible what the social actor has described.

3.8 Ethical Considerations
Ethical clearance was obtained from the Research Ethics Committee of the University of Zambia. Entry into the research sites was accorded using the University of Zambia introductory letter. As earlier mentioned, study sites included the High Court; clearance to enter the High court was done through the High Court Registrar.
Clearance to enter into the study ministries was done through respective Human Resources Management Administration officers at each Ministry Headquarters. Except in the ministry of Commerce, Trade and Industry where clearance was done through the Permanent Secretary.

Informed consent was obtained from the participants. The participants were informed that the interviews will be audio-recorded and notes taken. It was explained that audio-recording would help to listen to the interview later and that would help in making the transcription of the interview easier. Permission was then sought to audio-record the interview. Where participants agreed to have their interviews audio-recorded or expressed discomfort about audio-recording but opted for interview notes, all these views were respected.

In obtaining the participants’ informed consent, their rights were first explained orally to them. It was explained that they were free to participate in the study, and that their participation had no financial gains or any material rewards. They were also informed that they were free to withdraw their participation at any time without giving any reasons. It was also explained that the information obtained will be for academic purposes only and no names will be made known in the report. The oral explanation of their rights was followed by individual letters of consent signed by the participants and the researcher to guarantee indemnity of the participants. A copy of this letter is attached at Appendix E.
CHAPTER FOUR

THE RESEARCH FINDINGS

4.0 Description of Participants

The participants were described in terms of age, sex, marital, and employment status. A total of thirty six (n = 36) civil service employees participated in the study. This sample comprised of eighteen women and eighteen men.

4.1 Demographic Description of Participants

4.1.1 Age of Participants

The data on age were collected using age categories as some find it uncomfortable to give out their exact age. All the participants were adults aged 21 years and above. As adults they can own their own property independent of their extended family. The four youngest participants fell in the age range of 25 – 29 years. The six oldest participants fell in the age range 50 years and above.

Table 4.1 below and Figure 4.1 on page 62, shows the number of participants according to their sex and age.

<table>
<thead>
<tr>
<th>Age</th>
<th>25 – 29</th>
<th>30 – 34</th>
<th>35 – 39</th>
<th>40 – 44</th>
<th>45 – 49</th>
<th>Above 50</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Male</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>18</td>
</tr>
<tr>
<td>Number of participants</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>8</td>
<td>6</td>
<td>36</td>
</tr>
</tbody>
</table>

Table 4.1 Number of participants according to their ages
Figure 4.1 Number of participants according to their ages

4.1.2 Sex of Participants

There were eighteen men and eighteen women that participated in the study. This gave an equal representation of both men and women in the sample. See Table 4.1 on page 61 and Figure 4.2 below. This allowed for a better evaluation of the views expressed by both sexes on the phenomenon.

Figure 4.2 Female and male representation in the study sample
4.1.3 Marital Status of Participants

Twenty seven participants in the study sample were married, six were single, two were widowed and one was on separation with the husband. See Figure 4.3 below. All the participants had family responsibilities. Though some were single parents they took care of children of their relatives, while others took care of their parents. Figure 4.3 illustrates the marital status of the thirty six participants.

![Marital Status Chart]

**Figure 4.3 Marital status of participants**

It was also noted that the twenty-seven married participants, comprised of two types of marriages. See Figure 4.4 on page 64. Fourteen participants were in customary monogamous marriages while thirteen participants were in statutory or constitutional marriages. Of the fourteen participants in customary marriages two were females, and twelve were males. Of the thirteen participants that were in statutory or constitutional marriages, five were males, while eight were females. The sample indicates that there were more males in marriage (seventeen), than females who were only ten. It is important to know the types of marriages because inheritance laws apply differently between customary and constitutional marriages.
Figure 4.4 Types of marriages of participants

The types of marriages mentioned shown in Figure 4.4 above excluded those that were widowed and those on separation with their spouses. But the analysis of the number of marriages, each participant had contracted in, did include those that were widowed and on separation with their spouses. There were three male participants that were in second marriages, with one having remarried after the passing on of his first wife. These shared a common characteristic of having one child from their first marriages. Two of these had children from their second marriages as well while the third one did not have. There was no female that had more than one marriage. Those that were widowed had not remarried at the time of this study. The number of marriages the participants had is depicted in Figure 4.5 on page 65.
4.1.4 Number of Children Participants had

All the participants had family responsibilities. Some participants had children while others did not. Some of those that did not have their own children either looked after their relatives’ children or other relatives.

The number of children participants had, ranged between one and eight. Three female participants had no children while all male participants had children. See Figure 4.6 on page 66. However one female participant had eight children. Twenty three participants had between one and three children, while sixteen participants had between four and eight children.
Educational Level of the Participants

The participants had different levels of tertiary education. The different education levels attained were: Association of Chartered Certified Accountants (ACCA); Bachelor of Arts Degree; Bachelor of Science Degree; Masters Degree; Diploma; Craft certificates; and Zambia Institute of Chartered Accountants (ZICA) Licentiate. The majority of women (eight) and seven men had a first university degree (Bachelors’ degrees). The majority of men (four) instead had master’s degree as compared to only one woman who had a master’s degree. There were five men and four women who had diplomas. Only women (five) had craft certificates.

It was found out that the female participants that had written Wills were of diploma and first degree levels. Education is an important characteristic as it contributes to participants’ exposure to information necessary for self independence. Although the female participants constituted the majority holders of the first university degree among the participants, it was also found that they did not go beyond the first degree. This phenomenon of having more males than females advancing to higher degrees becomes a gender issue.
This gender issue was also expressed by female participants with university education but without written Wills. This was expressed through their desire for self independence. Some of them said they sometimes felt constrained by the traditional teaching of sharing their property with their husbands. Such expressions showed that level of education could contribute to exposure to information that could make women self reliant.

Table 4.2 below and Figure 4.7 show the level of education according to the sex of the participants.

<table>
<thead>
<tr>
<th>Level of education</th>
<th>Craft Certificate</th>
<th>Diploma</th>
<th>ZICA Licentiate</th>
<th>B.A./BSc</th>
<th>ACCA</th>
<th>Masters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>5</td>
<td>4</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Male</td>
<td>0</td>
<td>5</td>
<td>1</td>
<td>7</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 4.2 Participants’ level of education

Figure 4.7 Educational levels of participants

4.1.6 Participants’ Cultural Background

Zambia has seventy-three ethnic groups. These groups have different cultures, though some cultures have similarities. The importance of identifying these cultural backgrounds lies in their characteristic representation of the different customs of inheritance. These
customary inheritance practices are products of culture that inform people’s daily way of living.

There were sixteen ethnic groups represented in this study. Figure 4.8 shows the numbers of participants that participated in the study according to their ethnicity. The ethnic group that had a large representation was Bemba which had nine participants followed by Tonga with five participants. The Chikunda and Lozi groups were represented by three participants each. The Namwanga and Tumbuka ethnic groups were represented by two participants each. The rest of the groups had one representative each and these groups are: Chewa; Kaonde; Lamba; Lenje; Luvale; Mbunda; Ngoni; Nsenga; Saala; Swaka and Ushi. Therefore, taking each ethnic group as a cultural entity, this study had representation from sixteen different cultures.

Figure 4.8 below shows the cultures that were represented by the thirty six study participants.

![Figure 4.8 Cultures represented by the participants](image-url)
4.1.7  Employment Status
The participants were all employees of the Zambian Government and deployed in the civil service under the following ministries: Ministry of Education, Science, Vocational Training and Early Education; Ministry of Transport, Works, Supply and Communication; Ministry of Tourism and Arts; Ministry of Commerce, Trade and Industry and the Ministry of Health.

Employment in the civil service was the main the qualifying characteristic for eligibility to participate in the study. This attribute was critical in that it provided the means of identification, and assurance that the participants earned an income which they could use to acquire their own property, independent of the extended families. This also allowed for the assumption that the participants in their course of duty interpreted government procedures, policies and regulations.

4.2  Intestacy
The first question and objective of this study were concerned with finding out, from the sample the number of participants that had written Wills. The participants were asked whether they had written Wills or not. The first theme that was developed was that of not writing Wills or intestacy. Among the thirty six participants only five (three females and two males) had written Wills. Although the majority of the participants felt that written Wills were important they had not written any.
Figure 4.9 shows the number of participants that had written Wills and those that did not have.

![Pie chart showing distribution of written Wills among study participants]

**Figure 4.9 Distribution of written Wills among study participants**

4.2.1 **The Lusaka High Court Wills Register**

The study intended to capture the number of civil servants that had written and deposited Wills with the High Courts in Lusaka and Kabwe. The findings show that the Kabwe High Court did not maintain a Wills register as such was not holding any Wills. It was only the Lusaka High Court that maintained a registry for testamentary Wills. However, the register only indicated the names of the depositing persons and the date of depositing. There were no demographic details like sex, address, and employment status of the depositor. This created several challenges. The first challenge was to identify the civil servants and the districts where they work.

The second challenge was to gather the data about the total number of the civil service work force in the districts where the identified civil servants work. The third challenge was to identify all the institutions, such as churches, banks and chaplaincies, that individuals use to deposit Wills. Another challenge was that some Wills were registered in the names of law firms as such they could not be interpreted whether the owners were females or males. There was also one Will that was registered under two names, one of a woman and one of a man and this also presented a challenge as the data required in this
study was categorical, meaning authors of Wills should either be female or male and not both or otherwise.

If the study was to approach and cater for all these challenges it would have required the study to involve the whole civil service population in many districts and all other institutions that could have handled Wills for civil servants in those districts. This was not feasible for the scale of this study. Using this approach the correct picture of the percentage of civil servants having a Will was going to be established by identifying and adding the total number of civil servants who deposited Wills at the Lusaka High Court with those that deposited with other various institutions. This was going to be followed by comparing that data with the total number of civil servants in all districts where the identified civil servants were going to belong.

The data could not also be compared with the Lusaka population statistics. This was because the census statistics did not indicate how many females and males were above the age of twenty-one years and those below; how many were civil servants; and what their marital statuses were. The 2010 census data just indicated the number the population that was eligible to vote, though again not by sex. This set a challenge to extract the number of persons by sex eligible to make written Wills. Furthermore, people that may deposit Wills at the Lusaka High Court may not be restricted to Lusaka district only, but they could come from any other district in Zambia.

Having noted these limitations the data collected from the Wills Register at the Lusaka High Court was not used in this study.

4.2.2 Female Participants with written Wills
There were only three female participants that had written Wills in the study. Among these women one was married, the second was on separation with her spouse and the third participant was single. The latter was the youngest (30 – 34 years) Will holder even when compared to men that also had written Wills. She also had no children but looked after her sister’s children. The other two women had two children each. The education
attainments of these women ranged from Diploma, Bachelor of Arts to Bachelor of Science degrees level. Of the women who wrote Wills none of them had a master’s degree. The married woman was in customary marriage, while the other one who was on separation with the husband, had a statutory marriage. See Table 4.3 that tabulates some of the attribute of these three women that had written Wills.

<table>
<thead>
<tr>
<th>Interviewee No.</th>
<th>Marital status</th>
<th>Age</th>
<th>Number of children</th>
<th>Education</th>
<th>Type of marriage</th>
<th>Ethnicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Married</td>
<td>40 – 44</td>
<td>2</td>
<td>Diploma</td>
<td>Customary</td>
<td>Tonga</td>
</tr>
<tr>
<td>21</td>
<td>On separation</td>
<td>Above 50</td>
<td>2</td>
<td>BSc</td>
<td>Statutory</td>
<td>Bemba</td>
</tr>
<tr>
<td>33</td>
<td>Single</td>
<td>30 – 34</td>
<td>0</td>
<td>B.A.</td>
<td>N/A</td>
<td>Swaka</td>
</tr>
</tbody>
</table>

Table 4.3 Demographic description of women with written Wills

The female participants that had written Wills outlined various reasons for writing the Wills. Some participants said that they had learnt from their parents that wrote Wills and were still alive. The other participants said that they learnt about the importance of making written Wills through their education process, and others said that they witnessed some suffering of some families when it came to sharing of the property. Some participants said that they assessed the family environment and realised that their heir’s inheritance could be threatened without legal protection of a Will. Data from the three women showed that education and exposure to the inheritance laws had also contributed to the writing of Wills. It was found that those that learnt about inheritance during their training, and those that interacted with inheritance laws in their course of duty, understood the need for a written Wills. This was the case for two of these women that had written Wills. These experiences made the three female participants to write Wills.

The following are some of the expressed views of the participants:

One participant said:

*Actually the first Will I saw was for my dad. My dad had written a Will; [it is] no wonder we even survived ... that person [who had taken dad’s property] was told to bring back the property. Then myself I have also written a will for my two daughters .... Why I made the Will, I have seen the way families are suffering especially when it comes to property sharing and I learnt more when I was doing gender at NIPA. We learnt about inheritance*
The participant who was on separation with her spouse said: 
*Because of the problems I went through in my marriage. I realized I had to safeguard the property for my children. I wanted to ensure that in an event that something happened to me my property should go to my children. I thought I could safeguard what belonged to me for my children to lay their hands on.*

The participant who was single said: 
*... for me it is important. It is like a safety net for the family. I have a Will because of mum. My family is difficult .... I keep my sister’s kids. I have property. Some people feel when you write a will you die. But I have seen mum she has not died, she made a Will .... Because we are just two with my elder sister, I needed to provide back up for mum. She provides for my elder sister. I also got the example from mum.*

Although only three from eighteen female participants had written Wills all the female participants (including those that did not write Wills) acknowledged the importance of a Will. Data showed that in addition to the three that had written Wills, two other female participants made oral Wills. A widowed participant aged between 40 and 44 years, used funeral gatherings and other family gatherings to tell her relatives not to temper with her property as she desired that it should remain with her child. The other woman of the same age as the latter, who was single and without children, also told her relatives in family gatherings that her desire was for her mother to inherit her property.

All the female participants acknowledged a Will’s ability to foster family peace. This was understood to occur where the family accepts and follow the wishes of the deceased as expressed in a Will. The distribution of the property according to the testator or testatrix would not only prevent family ties to breakdown, but would also avoid fighting and protect the property.
Table 4.4 shows some of the views expressed by the female participants that had written Wills and those that did not write.

| It’s a good thing though a lot of people think you have to write a will when you have a lot of assets. |
| It’s good. One is supposed to write a will so that it is followed up that day …. At times it becomes very difficult, because you wouldn’t know who would get what especially for those who have got a lot of things. You find that one gets this, this one gets this and the children remain with nothing. |
| It is very important for the sake of peace and making some family ties not to get broken. It’s important to protect the property. |
| Yes I have, I think it’s a good thing to write a Will because there is harmony, peace and it becomes easy to share the property since the Will is going to guide. |
| It is important that one writes to avoid that fighting. |
| A Will is a good thing to have especially … where family members have their own views about property. |
| As for me I am for writing a Will…. I now know who I will leave the property with. |
| People must write Wills to stop talks. |
| For me it is important. It is like a safety net for the family. |

Table 4.4 Views of female participants about Wills

4.2.3 Male Participants with written Wills
There were only two male participants in the study that had written Wills, out of sixteen participants. These two participants that had written Wills did not only work in different ministries but were also located in two different districts. Both were married and aged between 45 – 49 years and above 50 years respectively. They all married once and had two and four children respectively. All the two men were in customary marriages. One was Tonga and the other was Chikunda.
Table 4.5 shows the demographic details of the two male participants that had written Wills.

<table>
<thead>
<tr>
<th>Interviewee No.</th>
<th>Marital status</th>
<th>Age</th>
<th>Number of children</th>
<th>Education</th>
<th>Type of marriage</th>
<th>Ethnicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Married</td>
<td>Above 50</td>
<td>2</td>
<td>Diploma</td>
<td>Customary</td>
<td>Chikunda</td>
</tr>
<tr>
<td>22</td>
<td>Married</td>
<td>45 – 49</td>
<td>4</td>
<td>ZICA Licentiate</td>
<td>Customary</td>
<td>Tonga</td>
</tr>
</tbody>
</table>

**Table 4.5 Demographic description of men with written Wills**

Data from these two men show that their reasons for writing Wills were that they did not want their property to be inherited by relatives that played no role in the acquisition of the same property. They further said that, they did not want their children and their spouses to experience difficulties in inheriting the property. They also explained that they were influenced by what they had experienced in their own lives.

One of these two participants explained that he had witnessed the property of his late father being shared by even far distant relatives. According to him, ‘relative came getting tractors, window frames, iron sheets and door frames from building, leaving the building as shells. They pulled everything everywhere’. These actions left the deceased man’s buildings in a vandalised and inhabitable state such that the surviving family and widow could not use them. He also experienced the struggles his widowed mother went through to educate her children, including himself after she lost the property left by her husband. He also explained that he knew a friend in Lusaka that had houses and operated minibuses but all these were taken by various relatives after his death, leaving the widow and children destitute and without any source of income.

The other male participant believed that making of Wills was not a new social fact. He argued that ‘Wills [are] not new. Historically oral wills were made. People would indicate orally how they wanted their property inherited. The oral wills were accepted’. It was therefore not strange to write a Will when one was literate. A Will was important for him as it avoided inheritance confusion that erupted when the property owner died. In
some traditions, the heir shares the inherited ‘property with his wives and children’ because of the tradition of marrying and adding the widow to his household.

In view of these experiences it was therefore felt that they needed to protect their heirs from other relatives that may be interested in inheriting and not the welfare of their surviving family members. For them traditions like chokolo or kukona did not serve the interests of the surviving families. Chokolo or kukona refers to the marrying of a widow by a kin of the deceased or inheriting of the deceased uncle’s or nephew’s property and taking responsibility of looking after the surviving families’ welfare. In reality this practice did not serve the interest of the widow and other family members but that of the one marrying the widow.

Table 4.6 below gives some of the reasons that made the two male participants to write Wills.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>[I wrote a Will] to lessen inheritance confusion after my death. Those</td>
<td>Whatever you have must be for your children. If the one that inherit is your brother or sister your children still suffer.</td>
</tr>
<tr>
<td>that I want to inherit my property should inherit it without confusion.</td>
<td></td>
</tr>
<tr>
<td>[I wrote a Will] to protect the assets. I know of a friend who worked</td>
<td>My example is my father. He had buses and had built a lot of houses … and had established businesses …. When he died relative came getting tractors, window frames, iron sheets and door frames from building, leaving the building as shells. They pulled everything everywhere. From that point I thought children and women must be protected …. My experience taught me …. People don’t care about your children.</td>
</tr>
<tr>
<td>hard with his wife and had houses, buses in Lusaka. But when he died,</td>
<td></td>
</tr>
<tr>
<td>within just a month all was gone. Relatives shared saying this is for</td>
<td></td>
</tr>
<tr>
<td>my uncle.</td>
<td></td>
</tr>
<tr>
<td>Table 4.6 Male participants’ Reasons for writing Wills</td>
<td></td>
</tr>
</tbody>
</table>

4.3 **Superstitious Beliefs about written Wills**

The second theme developed from the study was the existence of superstitious beliefs. These beliefs affected the participants in their choices of writing Wills. The effects of superstitious beliefs made participants develop fear to write Wills thinking they will die. It is believed that death would be as a result of the power of the Will itself, or by other
people killing or eliminating the testator or testatrix or the heir. This category was therefore divided into psychological death and psychological bewitchment sub-themes.

4.3.1 Female Participants’ Psychological Death Beliefs

The general expression by the female participants was that superstitious beliefs did not prevent them from writing Wills. They were instead prevented by other things which in this study were classified as non-superstitious beliefs. There were only three views in reference to death that came out in the data collected. One female participant explained how she felt constrained to discuss and encourage her husband to write a Will. She said ‘If in-laws heard that especially ... if death suddenly [occurred], they would think you killed that person so that you inherit [the property].’ The constraint arose from fear of coincidental death being associated to the wife’s persuading of the husband to write a Will. This type of belief was referred to as psychological death in this study. It will have been assumed that she caused the death of the husband so that she could inherit the property. This fear was explained in the following excerpt:

   This ‘Will’ thing sometimes you can be misunderstood.... It’s a new thing.... They [women] don’t want to be labelled materialistic because they feel ... if it’s the wife especially that is bringing up the topic, one would think maybe she is just interested in this property; she would wish me dead so that she inherits. If in-laws heard that especially, God forbid if [the husband died] suddenly, they would think you killed that person so that you inherit ... there is that [fear].

The second form of fear of death was centred on the testatrix herself. This was the belief that it was inappropriate traditionally to think of death. This was the belief that one should not think about their death because that amounted to taboo. This belief was expressed by one female participant as follows: ‘according to culture we tend to think its taboo to think about death. It is like the funeral policies, we fear to undertake them’.

The third form of fear expressed by female participants was that women did not make claims even to their own property acquired independently of their husbands for fear of being bewitched by the husband’s relatives. One participant said ‘women are also afraid to fight for their rights. They are afraid of witchcraft’. This thought was referred to in this study, as psychological bewitchment.
4.3.2 **Male Participants’ Psychological Death Beliefs**

The superstitious beliefs expressed by male participants fell into two sub-themes. It was found that some participants believed that possession of a written Will can make the testator or testatrix to die. This type of death was referred to as *psychological death*. It was also found that there were beliefs that the heir that inherits through a written Will can be killed through bewitchment by relatives to the deceased. This type of death was referred to as *psychological bewitchment*. In this section *psychological death* is discussed while *psychological bewitchment* is discussed in the next section.

It was explained that natural causes would make the testator or testatrix die just because of the Will that had been made. The death would occur because the individual would, at the time of writing the Will, have known about their own impending death. This is where the individual probably knew of their own health status or what would cause their death. The individual would have, before writing the Will, a natural inner premonition that they are going to die and it will be that premonition that would drive and motivate them into making the Will. Where the individual had no premonition about their impending death, it was believed that naturally death would occur because *‘the Will had strange powers that would cause the death of testator or testatrix for it to take effect’*. The belief that natural death would result from writing a Will means that death would not be caused by those people named as beneficiaries in the Will.
Table 4.7 below lists some of the beliefs about a Will causing death.

<table>
<thead>
<tr>
<th>Belief</th>
</tr>
</thead>
<tbody>
<tr>
<td>If I write a will, I will die fast or somebody will eliminate me, one of my relatives, including my children because they will know they are beneficiaries to my estates.</td>
</tr>
<tr>
<td>The only belief I think makes people … dilly-dally in writing … a Will is like the example of saying you guys come I show you where I want you to bury me. The moment you do that they say the sooner you fulfilled your intentions …. It is just that belief that they will die … so that the will can take effect.</td>
</tr>
<tr>
<td>Probably if someone knows that you left a Will they may take your life before time … most people fear for their lives thinking when you write a Will it’s like you have already predicted your end</td>
</tr>
<tr>
<td>Some fear being killed if someone comes to know about it. One can wish you dead to get their share.</td>
</tr>
<tr>
<td>There is a notion in the African culture that especially a woman, a wife, when they feel that you got a lot of things they may get rid of you if they know that you have got a Will that says they take everything. They may poison you, you die they remain with everything. So most people may fear that if I say I have left everything in your name, then this woman especially if you don’t get along properly she can kill me.</td>
</tr>
<tr>
<td>But some say it’s a taboo to write a Will you will die.</td>
</tr>
<tr>
<td>It sets concerns to other parties. They become suspicious, develop fear and create anxiety – why write a will?</td>
</tr>
<tr>
<td>Imagine I write a Will that leaves out my wife and my step children. When such a Will is leaked it would be total confusion.</td>
</tr>
</tbody>
</table>

Table 4.7 Male participants’ beliefs about written Wills causing death

4.3.3 Male Participants’ Psychological Bewitchment Beliefs

The second form of death found from the data collected is referred to as psychological bewitchment death. This was the belief that death would be caused by those persons with interest of benefiting from the Will. The killer in this instance is assumed to have two options. The first option was the choice of who to bewitch. The killer could either bewitch the testator/testatrix or the heir. The second option was on the method of killing. The killing method would be chosen between bewitchment and elimination. The heir in this case would be killed after inheriting. Whereas bewitchment was understood as the use of magical powers to kill the testator/testatrix or the heir, it was not explained how elimination would be carried out.

The possible killers were named as wives and children and relatives to the man. The wives and children would be interested in getting their share allocated to them in the
The relatives to the deceased man would kill the heir out of annoyance and frustration that their kin decided to leave his inheritance with some people they considered not part of their family. The relatives would be of the view that they have a right to that inheritance.

The participants however failed to give lived experiences of some one that was eliminated or bewitched because of making a Will or following inheriting property through a Will. There was no data collected from all the participants’ citing an example of someone that died because they wrote a Will or because they inherited property through a Will. It seems therefore that the psychological bewitchment is an assumption that has no proven facts. The claim was just an imaginary fear that is internalised as being real and existent. This imagination becomes accepted into their lives and influences their perceptions and social orientation towards their wives. It also influences the level of confidence and trust of their wives and children. Some of the expressions made about psychological bewitchment were:

_Sometime ... if a Will has been done and more of it go to the children and the woman, the woman may likely even do something just to get rid of the husband so that she enjoys whatever ... my wife may even get rid of me so that she remains and enjoys the property .... We are Africans and usually ... issues of witchcraft come in._

_The [heir can be] bewitched because the people [relatives of the deceased man] will say our brother has died and he decided to give everything to the wife .... We can’t allow that._

## 4.4 Non-Superstitious Beliefs

The non-superstitious beliefs, or in other words non-superstition factors, that were found both among the female and male participants formed the third theme. These beliefs or factors are non-spiritual but socially motivated. These involve ideas that one must first settle in marriage and even stop bearing children before considering writing a Will. The other factors were lack of individually owned property, lack of knowledge about the procedure for writing and depositing a Will and Lack of legal fees. The other reasons of delaying or postponing the idea of Will writing was that their families had a practice that allowed children to inherit their parent’s property and not the deceased’s kin or relatives.
It was also found that there was confidence with other modes of inheritance including the traditional system. These reasons were categorized into economic, social, legal knowledge, emotional and lived experience factors as sub-themes.

4.4.1 Female Participants’ Economic Factors

The economic reasons for female’s not writing Wills were that they owned property jointly with their husbands. They therefore expected their husbands’ to write Wills. Where the husbands’ did not write Wills, it was their expectations that they would make joint Wills. These views were expressed by married female participants in addition to other reasons. Some of the views expressed are given in Table 4.8 below.

| I don’t know, whether it is just a misconception when it comes to writing of a WILL as Women we always think it’s a man who should write the Will and not the woman. So … always you would discuss with your husband and you would probably encourage him to do a WILL than yourself. |
| You feel like I don’t know. I am sure most people feel like that; I am not the only one. It’s just the way we are brought up or may be just the way we are counselled and told when we are getting married as women [that we] have to share; so even such things you might think even if there is that law you might feel like sharing that information with your spouse. |
| Though [I] have property in my name but we have other properties in my husband’s name and then we develop together, Even now my husband and I are still arguing about writing a Will …. He does not want to write a Will. |
| I think I should discuss with him because the property is not mine alone. We acquired the property jointly. |
| The reason for not writing is because we need to do it together. Usually we are encouraged to own joint property. |
| Maybe it is not having sufficient property. |

Table 4.8 Married female participants’ economic views about written Wills

In addition to these findings above, some female participants were also faced with lack of individually owned property and lack of money to pay legal fees. This was sighted as a major constraint to their desire to write Wills. Though different words were used, basically the meaning was the same. This is what the participants’ said:

\[ I \text{ make a Will so that to do what? I really [do] not have anything.} \]

\[ I \text{ don’t have property [to make a Will for].} \]

\[ I \text{ have nothing tangible to give my child.} \]
I do not have money to pay a lawyer.

4.4.2 Male Participants’ Economic Factors

The data collected showed that the economic reasons that caused male participants not to make written Wills were those of lack of property, low value property and incapacity to pay legal fees. It was found that some reasons attributed the lack of property to poor civil service conditions of service, while others were only beginning to acquire property. Some participants felt that a car, a plot or just a house were properties not worth writing a Will for. This was explained by statements like:

- *I don’t have a Will because I am just starting to acquire property*’ and ‘*so far the reason is simple: I don’t have serious property to talk about. I am just in the early stages of wealth accumulation.*

Further still, others viewed it to be difficult to write a Will when one had only one property such as a house, while having three or four children born from different mothers. Others had children born from one mother and living with them but still had difficulties to write a Will to distribute the only one property to all the children and their mother. This can be concluded that the desire to accumulate certain amount of wealth was necessary in order to allow them to distribute the wealth among their surviving families.

Table 4.9 gives some of the economic reasons that hinder writing of Wills.

<table>
<thead>
<tr>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Will is made when one has wealth. If one has no wealth, what can be written?</td>
</tr>
<tr>
<td>So in short it’s the level of poverty that discourages [making of Wills] because I mean what are you going to take there as demonstrable property… to be passed on … I have said I don’t have enough property worth writing a will about.</td>
</tr>
<tr>
<td>An average civil servant with just a handful of property to talk about; they are careless to think about Will writing.</td>
</tr>
<tr>
<td>I don’t consider it [two cars and two plots] property</td>
</tr>
<tr>
<td>Probably the fee to pay a lawyer might be expensive than what I have to leave behind</td>
</tr>
<tr>
<td>It [writing Wills] must be encouraged among the elite</td>
</tr>
<tr>
<td>Some people do not write Wills because their current property is not worthy to write a Will about.</td>
</tr>
<tr>
<td>Like in my case I have only got only two houses. Now I have got four children. How do I share them?</td>
</tr>
</tbody>
</table>

Table 4.9 Economic factors that hindered writing of Wills among male participants
4.4.3 Female Participants’ Social Factors

The social reasons advanced by female participants for writing of Wills were that they procrastinated, and preferred other modes of inheritance. They also believed that their children or parents (in case of single participants that had no children) were going to freely inherit their property. There was a feeling that there was no urgency in making a written Will. There was also an understanding, which came from observed trends in their families, where children and the surviving spouse were freely allowed to inherit from their deceased parent and husband or wife. It was also indicated that the families were already aware of this trend. They even talked among themselves that each parent should look to their own property. Each parent’s properties shall be inherited by his or her children. There were also views that it was naturally given that the property was going to be given to their children and parents. These views were expressed by female participants that were single parents, or those whose parents had already died, and or those that felt that their extended families were relatively comfortable and would not want to inherit property from other relatives. Those that had such feelings they felt it was not necessary to write Wills because there was no threat to their heir’s inheritance.

Table 4.10 gives some of the social beliefs of the participants about inheritance of their property.

<table>
<thead>
<tr>
<th>I haven’t just thought about it seriously.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most of the time if we sit may be … [at] a funeral somewhere, you just say ine ifi mulemona [for me, these things you are seeing] … are for my son. Ing’anda aikona ukula lolesha ko [do not look at the house], it is for him to get educated …</td>
</tr>
<tr>
<td>Automatically my properly will go straight to the people I am keeping the children that are direct to me …. I would say they will go to my children because I know the calibre of my family. Most of them are independent …. I don’t think anyone can bother them [my children] …</td>
</tr>
<tr>
<td>It is something already known that my property will go to my mother. We talk about it when we are seating as a family.</td>
</tr>
<tr>
<td>It has never crossed my mind [that I need to write a Will].</td>
</tr>
<tr>
<td>I talk to them [my children] verbally, I tell them to take care of the things.</td>
</tr>
<tr>
<td>Here in town it is automatic; the spouse is in charge of the property</td>
</tr>
<tr>
<td>[I will use the traditional inheritance system because] it is just right for me, because it falls within what I believe in … [it] has been practiced and I believe it’s the right thing. It is right if it will create harmony.</td>
</tr>
</tbody>
</table>

Table 4.10 Female participants’ Social Reasons for not writing Wills
4.4.4 **Male Participants’ Social Factors**

The social related beliefs and issues were prominent in the data. These social beliefs were varied as shown in Table 4.11. They included personal inertia, wanting to settle in marriage, and having different inheritance methods. The idea of still wanting to settle down and personal inertia was where individuals felt no urgency to making testamentary preparation of whatever they had. It was found that there was desire to first marry and have children to the point of having the last born before deciding to write any Will. It was felt that writing a Will before one was settled would disadvantage those children not yet born. It was also found that there was preference for other ways of passing ones’ inheritance. There were feelings that extended families should also benefit and for such a Will was a hindrance. For others still joint ownership of property was sufficient and served as joint Wills in themselves.

<table>
<thead>
<tr>
<th>Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>I just got married a year or two ago. Probably I am trying to settle down</td>
</tr>
<tr>
<td>But as first of all you are still having children</td>
</tr>
<tr>
<td>We have an extended family system. So if you write a Will, you close out other people and so what will happen after you die? Who will look after your children is it your Will, or you also need support of other people?</td>
</tr>
<tr>
<td>It’s just personal inertia which is in me.</td>
</tr>
<tr>
<td>I have no specific reason [for not writing a Will]</td>
</tr>
<tr>
<td>I believe whilst you are still alive, instead of you leaving a Will, it is very important that whatever property you have you make sure that you secure them for your children. If your parents are still alive you secure them for your parents. Like in terms of property – the houses; you make sure that you put a caveat.</td>
</tr>
<tr>
<td>The best way as I have five children is to put a caveat that the house remains a family property</td>
</tr>
<tr>
<td>I will register the property in her [my daughter’s] name.</td>
</tr>
<tr>
<td>We already have joint ownership. So this is a Will in itself.</td>
</tr>
<tr>
<td>It will just be normal. My family will not interfere with my estates.</td>
</tr>
</tbody>
</table>

**Table 4.11 Social factors that affected male participant’s writing of Wills**

4.4.5 **Female Participants’ Legal Factors**

The legal belief sub-theme included socio-education as one element of the non-superstitious beliefs. This is where it was found out that participants did not possess adequate knowledge about the law and procedure involving the written Will. It was found that participants did not know how to write a Will. This was clear from these two statements made by different female participants, which were:
‘I want to write but I am yet to look for someone to help me’ and ‘in most cases [it is] a lawyer who can write a Will for better understanding’.

There was lack of information on how to make a written Will. There was a perception that the procedure for making a Will and depositing it for safe keeping and arranging for means for invoking it was complicated. To this effect it was found in the data questions like:

*Where can I leave it? I am not aware of the procedure of safe keeping of a Will*

Furthermore the participants confessed that they did not known where to get legal assistance. They also explained that the requirements needed to be met by a testator or testatrix towards logging in a personal Will was not clearly understood. Finally it was also said that women did not know their rights that were enshrined in the statutory inheritance law. It was learnt that because of this women did not make efforts to claim their property. Women would agree that the property belonged to their deceased husbands, even when it did not, and allow it to be taken by his relatives just because they are threatened with witchcraft. It was also found that all the study sites had no legal departments.

4.4.6 Male Participants’ Legal Factors

It was found that there were beliefs that the provisions of the law were adequate but there were injustices in the delivery of justice. It was felt that lawyers cannot be trusted. It was believed that the lawyers could go to an extent of receiving payment in order to alter the contents of a Will as one participant explained: ‘people connive with lawyers to manipulate Wills’. There were also beliefs that contents of a Will needed to be known while the testator was still alive. This would deter such acts where ‘relatives manipulated the Wills because people did not know about their existence’.

There was however preference for other modes of inheritance. Other than Wills being perceived to have a lot of legal technicalities, the majority of the participants had no
confidence in the Wills and Administration of Testate Estate Act and the justice system as it was felt that ‘the laws [were] there but the enforcement [was] ... for the rich’.

The legal fees were also perceived to be higher than the value of some of the civil servants’ property. It was also found that there was no deliberate effort to know the provisions of the law concerning inheritance through use of written Wills and there was also no sensitisation in this area. It was explained that lack of knowledge about their testamentary rights and powers encouraged the reliance on the Intestate Succession provisions that was perceived to be sufficient to cater for the surviving families.

These were expressed in such statements like ‘the laws are adequate to cover my estates after I die’ and ‘the law is currently protecting the surviving family’. It was also found that there was lack of knowledge on the procedure for writing, depositing and making arrangement for invoking the Will. Responses were replete with statement like:

> What I need is to see myself being assisted by somebody with legal knowledge. There should be just that education about Will writing. Education on how [to] write a will...

4.4.7 Female Participants’ Emotional Attachment Beliefs –

The emotional attachment sub-theme was derived from participants’ explanations that people did not make written Wills due to their attachment to their extended families. This view did not come out prominently in the data collected from female participants. According to this view, however, writing of legal Wills meant that the testatrix intended to exclude the members of their extended family from being beneficiaries of their estates. Hence there were expressions like ‘some people fail to write Wills, to put up Wills, so that they don’t block certain people [from] benefiting’. These expressions were a clear indication that people did not know that they were at liberty to apportion any part of their inheritance to any family member they wished to. It was further understood that this lack of legal knowledge led to indecisiveness like was expressed in the following except:

> I wouldn’t want it to be done [write a Will] like that I think it’s time, though we did have property in my name, but we have other properties in my husband’s name and then we develop together. Then I have my mother in the picture she is still living. There are times when I am like may be if I passed on obviously if they say that the beneficially is the husband [and]
children then does my mother come in the picture. There are times when I feel like that. So I don’t know if I did [wrote] a Will may be I would, say my mother can benefit from this.

4.4.8 Male Participants’ Emotional Attachment Beliefs

Emotional attachment feelings were also found among male participants. It was found that there was attachment to one’s kin and feelings that they needed to have their kin to inherit their properties. This view was emotionally expressed although by only a few participants. There was conflict within individuals as to whom they would want inherit their properties. This conflict was clear in the following views:

That has contributed to the street children problem that we have in Zambia now. [This is] because usually when children [after] the father die, they share the property with their mother, the family of the man ... are side lined. At the end of the day if the children now deplete whatever the father left, they fail to go back to the family of the father’s side. Therefore they just remain in the streets. Even those people from the father’s side [argue that] these people thought they were clever they shared everything we didn’t benefit anything from our relative, so let them suffer like that ....

It is good and I encourage it. But then it should also recognise both sides. Though in terms of the nuclear family, they should get a bigger share. But even the other part they should benefit in terms of the property.

To begin with, we usually have problems with those who die intestate. The Intestate Act is not fair in that the relatives of the deceased are left with minimum inheritance because the percentages allocated are too low. This happens especially if the husband dies where everything goes to the children and the surviving spouse. But the uncles to the deceased and other relatives are not catered for. But by our culture you find that such a person could have been cared for by uncles and aunties. However, they are not catered for in the Intestate Act. That has created a situation whereby the extended family care is reducing nowadays. This is because you know even if you take care of your niece you will not benefit after all. It has increased streetism.

Inheritance did not result into orphans that ended up on the streets. There were no street children. Children and widows were looked after. In this sense the system of Chokolo was positive.

Other views were that it was better to secure assert for one’s parents. It found that the inclination towards the extended family however was only to close family members like mothers. This was expressed with statements like ‘if your parents are still alive you secure them for your parents’ and ‘the people in mind are the children and parents’. It
was also discovered that the provisions of the Intestate Succession Act and those of the Wills and Administration of Testate Estates were in some cases mixed up and in some other cases not adequately known. This caused the failure to understand that the Wills and Administration of Testate Estates did not prevent the testator or testatrix from including one’s parents in their Will.

This finding is related to the finding that male participants were afraid that their wives and children could kill them for writing Wills. This feeling compromises levels of confidence and trust between women and men in their marriage. Where there was such mistrust there was no confidence and trust that their surviving spouses would take care of their interests after their death and consequently developing attachment to one’s extended family. This could explain the finding that from the responses there were only two instances when men referred to trusting and having confidence in their wives as follows:

*My wife, I trust her. She can manage my estates ... she can [manage my daughter from my late wife]. I have come to trust her after being with her for this long. She can.*

*It is better for the remaining colleague [spouse] to decide who gets what ... it is my wife and my children that know how I acquired it [property] .... So for me my wife is better placed to decide what to give my relatives.*

This study was not studying love and trust among couples but how individuals prepared their properties for future inheritance especially by using written Wills. Therefore the issues raised in this finding have become opportunity findings. They are not explored further but perhaps can form another research question.

4.4.9 Male Participants’ Lived Experience Beliefs

The last sub-theme was about socio-education and exposure learning from the significant others. Despite the importance of this sub-theme, it was the least thought of by the participants. It was found that participants had no one to learn from, especially from within the immediate family members, the benefits or disadvantages of having a written Will. This led one male participant to observe that ‘I don’t know anyone who wrote a
will in my family’ making it difficult for him to do what no one of his relatives has ever done.

4.4.10 The Historical Origin of written Wills
The historical origin of the culture of writing Wills was another form of non-superstitious beliefs. The existence of this was not directly referred to by the majority of the participants but was deduced from their expressed views about the inheritance law in general. There was a struggle to accept the written Will for the good of their children first, and secondly, for their spouses. The expressed sentiments were made by few female and male participants. There were views that described the culture as foreign, asserting that Wills were un-African. This was the belief that written Wills were made by Europeans and other ethnic groups other than Africans and Zambians in particular. It was also believed that the motive of making a written Will was rather selfishness. The written Wills were seen as being un-African as they worked against the extended family, unit by denying them inheritance of property to ones’ blood relations; to one’s kin.

This orientation was however, not without opposing view. The opposing view was that Africans made oral Wills in which they would make known their preferred heir and that this system faced no opposition.
Table 4.12 show different views expressed by the female and male participants.

<table>
<thead>
<tr>
<th>Views of female participants</th>
<th>Views of male participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>According to culture we tend to think its taboo to think about death. It is like the funeral policies, we fear to undertake them</td>
<td>First of all it is un-African. It’s a new concept people don’t understand. It’s just like [one that] takes a funeral insurance policy. Insurance companies come to our offices selling [funeral] insurance policies but we refuse to buy these policies. So the same way we refuse to write Wills because people will bury us.</td>
</tr>
<tr>
<td>It’s a new thing…. When you start talking about the WILL you start telling your spouse that, you know this, I don’t know really…</td>
<td>The [Succession] Act is more consistent with African values. In an African context you would have the idea of the eldest child can get this; the property will be shared among the brothers.</td>
</tr>
<tr>
<td>In our Zambian culture we do not consider that so much, we think it’s more inclined to the Western World.</td>
<td>It is just un-Zambian to prepare for worst like buying a coffin for yourself.</td>
</tr>
<tr>
<td>It is foreign to Africans. It is like you are cursing yourself.</td>
<td>Writing of wills is not new. Historically oral wills were made.</td>
</tr>
<tr>
<td></td>
<td>You should bear in mind that the African set up is such that we haven’t yet recognized the use of a Will.</td>
</tr>
</tbody>
</table>

Table 4.12 Views about the origin of the culture of written Wills

Studying this question of originality of the culture of making Wills began by looking at historical inheritance practice of the ethnic groups of the participants and ended with analysing modes of inheritance preferred by the participants. Four questions were used as interview questions. These questions were specific to seeking participants’ views about historical cultural originality of the writing of Wills as a means of distributing ones property in death. The questions were further framed to find out whether the participants preferred to pass on their inheritance through the cultural system. Answers to these questions sought to provide information required to understand the civil servants view about the cultural practice of writing Wills.

4.5 The Fluid Current Inheritance Practice

In order to understand the cultural practice of the participants they were asked to explain the process of passing property after the death of the owner. The question used required
the participants to explain what they knew about the process, in their culture, that is followed in distributing the deceased person’s property.

The general response showed a shift from the traditional inheritance practices into more unspecific fluid inheritance system, and this formed the fifth theme. The shift was driven by two broad factors namely acculturation and adaptation of statutory laws. The process of legal adaption was involuntarily followed for fear of negative sanctions instituted by the state.

Acculturation was also influenced by education and exposure to different cultures and societies. Education determined the level and type of cultures one got exposed to. It was because of these factors that one female participant said ‘here in town it is automatic; the spouse is in charge of the property’. Some through education read and knew about other cultures. Others got exposed to other cultures by travelling to different places for education or work purposes. To this affect one female participant informed the researcher that she ‘learnt more when doing gender [course] at National Institute for Public Administration’. One male participant observed how the urban cosmos social environment affected the social perspective of individuals and stated that:

> You know we are talking about systems having evolved on [by] the real fact that we are in an urban setting and the very fact that there is mingling of culture, teaching things that people have learnt over time. Of course there is the issue of this culture being superior to other cultures, but the very contacts that we have made with other cultures have taught us a lot. Education has also really taught us human rights.

The factor of residence or neighbourhoods seemed also to contribute to the shift associated with acculturation. Some participants referred to what they saw happening in their neighbourhood among families from different ethnic groups and how they thought of those actions as being negative or positive respectively.

One female participant recounted that [my] uncle had children from different women. He wrote [a Will in which he stated] that property should not be sold. Some people were not happy wanting to kill each other even using magic. But I as the niece had to stand to protect the house from being sold like the will stated.
Another female widowed participant observed with dismay that *for us women, we were also educated by our parents ... also that man who marries you ... was also educated by his parents, but what I see this time is that the woman gets everything.*

One male participant said *the observations I have seen are that people just to share property without considering the children who are remaining or widow.*

One male participant that had a written a Will narrated that *I have seen situations where the spouse suffers especially if there were no papers. The widow suffers being told [that] these assets were for our brother. They even go behind her [and] sell the house. For a man normally, the percentage is not high. Normally they do not grab from the man. Here and there they may be things from the kitchen, or where the woman was working but not much. But it is really bad for women. She has to leave the urban area and go to the village. Some women even die because of the treatment received when the husband died. The system is really hammering the women.*

The customary inheritance system discussed by the participants showed that tradition was male eccentric, although it was slowly changing to allow for the females to also inherit property. The variables on the inheritance equation were devoid of the female factor. It was mentioned that a widow would be taken over by a member of the family of her late husband. Control of her children and property would fall into the hands of an assigned man. Her view on the matter was not important. When a woman died there are no issues about inheritance for it was by default that the husband was the legitimate owner of whatever the family possessed. Some participants said the practices occurring in rural areas among given ethnic groups were not happening in the urban areas. People in the urban areas did not want to embrace some of the rural inheritance practices because they either favoured practices of other cultures or have blended cultures.

One male participant said *‘I don’t think when an urban dweller ... in urban setting ... still wants his name to be passed to another person who is still living’.* The other factor for the shift was the disease burden especially the HIV and AIDS pandemic. HIV and AIDS had not only changed inheritance in urban areas but also in rural areas. Two major practices that have been altered by HIV and AIDS were the inheritance of the widow by a kin of
the deceased and substitution of the deceased woman. The former is a practice where a brother or cousin of the deceased man marries the widow, while the latter is a practice of giving a widower another woman by the family that has lost their daughter. These practices are called chokolo. Chokolo is practiced among the eastern Zambian tribes, while ukupyana is practiced among northern Zambian tribes and kuyobola is practiced in the southern Zambia as they were used in the following excerpts:

One female participant emotionally observed that in [our] culture there is what we call chokolo. If my husband had to die, his young brother or a nephew has to take over me and my children. Even if he was married to somebody else, that wife has to abide to the fact that this relative has left a wife and children and that her husband has to take care of me as well. I will be [taken in] chokolo .... You have to go and that man is the one responsible for the estates.

Another female observed that in real [Southern Zambian] traditions, a nephew inherits property including the wife or wives.

One male participant explained that there is the issue of ukupyana. A cousin or brother will take over my wife, children and property.

... Of late because of the HIV and AIDS pandemic even those people in rural areas have stopped the old practice recounted another male participant.

In reference to these changing perceptions, participants were of the opinion that widowers should not carry property inherited from their late wives to their new marriages. This means widowers were not remarrying relatives of their deceased wives hence the expression by two female participants that:

*It is just bad for those parents seeing that our daughter was also working. She also contributed to even [build] that house or whatever. But after two months another person is the one who is living there.*

*My husband [should inherit my property] but I will be very specific that if he remarries, all property should go to the kids.*

There was only one male participant that was aged above fifty years that referred to the use of oral wills in the past and that they were accepted. There was a male participant that did not want to call the vision, which he continuously discussed with his children, as an oral Will. For him he discussed with his children how he wished his farm and other
properties to be continued even after his death and he stated ‘we usually talk about our vision at the farm when they come during the holidays’. Another male participant informed his kin brothers how he wished his property to be inherited and he stated that:

\[ I \text{ have verbally talked to my brothers. May be this was my oral will. I have told them whatever you have acquired is yours with your wife and children. That also applies to me. } \]

Two female participants also informed their relatives how they wished their property distributed in the event of their death but without realising that they were making oral Wills: ‘we make oral Wills although I never thought about it that way said one female participant with surprise. A widowed female participant also recounted that while ‘we are seated jokingly pacililo [at a funeral] then I tell them ... [my property is] for him to get educated because me I am a widow’

Whereas this study was not focussed on recounting historical customary practices; such information was important as it illustrates the social stages experienced by the participants. People as social beings live their lives according to their viewed realities of social environment. This means that social life actions are external manifestations of contextualised meanings. It was these contextualised meanings manifested in symbolic actions that were the core of this study. But it was those actions revolving around testamentary distribution of ones’ property for posterity’s inheritance in the modern milieu that were of concern here. Some of the responses on the inheritance practices were as follows and for these there was no mention of use of the Will in the cultural system:

One female participant said grabbing was rife when the deceased had no child and the uncles were the worst culprits. They [thought] they [had] the right that property [had] to stay with [their] family ... [nowadays] if the lady dies and if the children are grown up; they surrender only plates and clothes to her parents. Then the rest they are given to the children ... When a man dies his relatives are just given his clothes. The rest of the things are given to the wife and the children.

Children and widows were looked after. In this sense the system of chokolo was positive ... Historically men inherited property. They also inherited the widow and the children in the culture known as chokolo .... Historically oral wills were made. People would indicate orally how they
wanted their property inherited. The oral wills were accepted' recalled one male participant.

One male participant said I have noticed from the Eastern part of Zambia [tribes of Eastern Zambia] the woman is side-lined .... My mother’s part, the Northern part of Zambia ... they make sure that the estates go to the children.

[In our Bemba culture] first we have to consider the widow, then children. Thereafter may be the parents to the late asserted one female participant.

Like in the Bemba culture ... first there is the issue of passing the name of the deceased to someone who is living ... in [a system called] ukuyana. The person who pyana [would] be given that name and the clothing of the deceased ... that person therefore controls the estates that was left by the deceased ... he assumes full control of what property should go to who asserted another male participant.

After having delved into the historical practices of inheritance, the next step was to find out the likelihood of the participants to adopt cultural systems for the inheritance of their estates by their preferred beneficiaries. The questions used to inquire into whether participants were going to employ the customary inheritance system in passing on their property in inheritance.

The responses fell into two categories: yes and no. More than thirty responses were against the customary system of inheritance. There were only a few participants that were for the idea of adopting the customary system for the inheritance of property. These participants were more inclined to the customary system and hence they placed emphasis on the need for some of the extended family members to be considered. The support for the customary system was understood as having being practiced from time immemorial and therefore has been refined over the period of time and it was not just right, but it also brought about harmony among the family members.

The latter view had support from male participants’ submissions that the extended family members had obligations to care for their deceased brother’s surviving family members.
The care was to be given to the children and for specific purposes like education. For these men however the widow was to be allowed to lead her own life.

Common to these contributions was the male centeredness focus. In this case it was the dead man’s widow and children that must be attended to. It was not that property of the deceased woman just like one participant remarked that when a woman died ‘they just bury and it ends. A wife is considered not to own anything’. There were however, contradictory data to this. The other evidence showed that women also had property as was explained by one female participant that said ‘if I die my uncle will benefit from my property’.

This bias towards the deceased brother’s surviving family members explain the assumption that property is owned by men. Women are part of the property or chattel men own. When a man that was looking after that property dies, another man must assume responsibility. Although supporting male property ownership one male participant still admitted to the social discrimination by observing that ‘there is need to empower women to own property ... if the woman ... bought an item people would view that [as] the man’s property’.

It was found that there was a general shift moving away from customary inheritance system to other modern systems. There was a move from extended family to nuclear family system. It was also becoming desirous that the nuclear family take prominence for inheritance to be beneficial. It was also increasingly becoming necessary that people learn to work for their nuclear families and not to look to the extended families members for accumulation of property through inheritance. To this effect the participants made the following comments:

*I think the government should come up with a policy by pronouncement that whoever dies, the property that is left should be for the surviving children and the wife, or should be for the surviving husband and the children. Then people will stop bothering others. People will stop acting like vultures waiting for a funeral to take place.*
I will use a Will to pass on my property ... to lessen inheritance confusion after my death. Those that I want to inherit my property should inherit it without confusion.

It is better to have a Will for both the husband and wife to indicate who inherits the property. Without a Will the intestate Act comes into play.

Nowadays it is better with the introduction of statutory law. There are less cases of grabbing.

It is better for the remaining colleague to decide who gets what. For example when I started working, as I reported at my first station I had only a small box where I put my few things. But this time I use a truck to shift. All that I have acquired, it is my wife and my children that know how I acquired it. It would therefore be unfortunate for my relatives to walk in and get things. So for me my wife is better placed to decide what to give my relatives. Some people abuse the succession law.

It is better your children and the surviving spouse inherit the property.

The message was loud and clear. The message was succinct that people should work for their own property and those with property should pass it to those they wished to without anyone jostling unnecessarily.

Having looked at the probable inheritance methods indicated by data, it is now time to find out the favoured and practiced methods. In as much as the participants had made responses indicating their probable preferred systems of inheritance, it was found that only eight (three males and five females) participants had concrete decisions about making of some form of Wills in order for their heir to inherit without complications. Among the eight participants, that had some form of Wills, five were females and three were males. It has already been mentioned that three females had written Wills. The additional two females had instead oral Wills. Similarly, in addition to two the males already discussed that had written Wills, one more male felt comfortable with an oral Will.

The other participants had varying views about the system they wanted for inheriting their estates. The methods mentioned were registering of property in the children’s names, having joint ownership of property, putting caveats on the property so that it is
not sold and creating trusts. It was also found that there was a system where it was believed that no extended family members would interfere with another family’s inheritance. Admittedly some had good ideas like creating trust and leaving property with their children and or their parents but they had not made efforts towards their desired ends. They were not on any defined approach to prepare their estates for possible inheritance. Whereas they generally accepted the social fact of human mortal nature, they had not accepted to take positive steps for the benefit of those they loved. It was found out that they lacked motivation to make them want to prepare for their heir. It was observed that this area lacked sensitisation and that sheer laziness prevented people from making steps to prepare for their heir. Lack of guidance also was clear in some of them as they could openly say ‘I need guidance’. Nevertheless some of the reasons as given by them for the indecisiveness are discussed later.

4.6 Understanding Intestacy from the Findings

The findings in this study showed a likelihood of high intestacy among the sample. There were various reasons that accounted for possible high intestacy. These were divided into superstitious beliefs (inner beliefs), none-superstitious beliefs (external beliefs) and the historical origin of the culture of writing Wills. The various permutations of these factors made the writing of Wills to be relegated to the unknown future. Figure 4.10 is intended to understand the intestacy phenomenon from the perspective of the individuals’ inner and external beliefs. The inner beliefs were not substantiated with empirical evidence while the external beliefs were proven daily life experiences from which different stand points could emerge. These various views lead to various understanding of the phenomenon of intestacy as represented in Figure 4.10 on page 99.
The written Will has supernatural powers that cause the testator/testatrix to die.

Inheritance through a written Will causes the heir to be bewitched by relatives of the testator/testatrix.

Writing a Will when still bearing children disadvantages those conceived before the death of the testator/testatrix.

One must accumulate considerable amount of wealth before writing a Will.

Procedure for making written Wills not availed to the public and therefore unknown.

Fear to exclude the kin if one writes a Will.

Fear to make a written Will as this has never been done by anyone in the family before.

As an African it is culturally wrong to write Wills.

Psychological death beliefs

Psychological bewitchment beliefs

Social beliefs or factors

Economic beliefs or factors

Legal factors

Emotional attachment factors

Lived experience (role model) factors

Belief that writing Wills is not original to Zambian culture

Superstitious Beliefs

Non-Superstitious Beliefs

INTESTACY

Figure 4.10 Framework for understanding intestacy
CHAPTER FIVE

DISCUSSION

5.0 Purpose of the Study
The objectives of the study were all met. The study aimed at finding out, from among the study sample, the prevalence of written Wills, the factors that affected the writing of Wills and what was known about the Wills and Administration of Testate Estates. The achievement of the objectives was possible through gaining an understanding of the socio-behaviour of making of written Wills. This was in order to add to the existing body of knowledge about inheritance.

5.1 Intestacy
The first research objective of the study was to find out the prevalence of having written Wills among selected civil servants. The study intended to explore the behavioural characteristics of urban civil servants towards having or making a written Will. It was found out that there was high likelihood of intestacy among urban civil servants. The findings indicate that out of a sample of thirty six (36) participants, only five (5) had written Wills.

Out of these five participants who had written wills, three were women. One of the women was single and aged between 30 – 34 years and had no children. The other woman was aged between 40 – 44 years and was in a customary marriage and had only one child. The third woman was the oldest and aged above 50 years, and had two children. She was on separation with her husband. The other two participants who had written wills were men. They were aged 45 – 49 and above 50 years respectively. They were both in customary marriage and had one child each.

The youngest of these Will holders was the single female participant aged between 30 – 34 years. She did not have children of her own but was looking after her sister’s children. The oldest were one woman and one man who were aged above 50 years.
The assumption was that more males would have written more Wills in comparison to women. But to the contrary more women had written Wills in this study. Men were more favoured to have written more Wills than women because of patriarchy and culture which ascribe roles that assign males more valued roles and of higher status. What we learnt from the findings of this study is that women are slowly increasing their cognitive capabilities and are slowly moving away from dependence on husbands. This can be attributed to conscientisation.

Conscientisation is a process of becoming aware of the extent to which problems arise not so much from an individual’s inadequacies but rather from the systematic discrimination against a social group which puts all members of that group at a disadvantage (Longwe and Clark 1999). Women’s conscientisation is a crucial step in the process of empowerment. Conscientisation is a stage in which women come to understand the nature of obstacles they face and the need to, not only overcome but to dismantle the obstacles.

By writing a Will, therefore, it gives the woman the ability to direct, or to influence events so that one’s interests are taken care of. The writing of will, ensures that the resources and befits are distribute to right.

The thirty six participants’ ages ranged from between 25 – 29 years to above 50 years. If the theory of ageing could be applicable to explain the behaviour of writing Wills it may mean not the advanced number of years but probably the appreciation of one’s life gifts. This is shown in the Will holders that include ages of 30 – 34 and above 50 all having written Wills.

Ageing has been defined by Phiri (2004) and Tibbita and Donahue (1962) to include the feeling of having reached the age of reflection. A point when one feels the grace of God had been extended and that they had been rewarded by life. But this reward of life was not only positive, there were concerns also about continued happiness, issues of acceptance and even fear. It can be understood from the ingredients of the definition of
ageing that there are different views of the phenomena. The views can be positive or negative. It was the elements of fear of properties being mismanaged that made the Will holders to assign the properties to those they felt needed them and would make good use of them. It was also an appreciation of life gifts and desire for continued happiness of their posterity that they took the steps to write Wills.

If one sees old age as a positive phenomenon resulting from receipt of life rewards, they may at that stage wish to give out their treasurers. But the opposite can also be true in respect of the levels of acceptance and the type of fear possessed by one. If a person cannot accept that they have grown old and can also not accept that what they have is what their labour can yield they may hesitate to give it away. This means depending on how one understands ageing they may make a property testamentary Will or may not make one.

It was found in this Study that age was not a factor when it came to writing of will. This can be evidence by the fact that within the same age groups some wrote Wills, while others postponed Will writing until they get married, settle in life and have children and property before they could think of writing Wills.

5.2 Superstitious Beliefs about written Wills
The second objective of study was about exploring existence of any factors that affected the writing of Wills. This objective was achieved and it was found that there were both superstitious and non-superstitious beliefs about making and having a written Will. The non-superstitious beliefs are discussed later.

The superstitious beliefs were that the writing of a Will would cause death of the testator or testatrix and or the heir. The death would be caused by the inherent power of the Will or by persons interested in inheriting the property. The death caused by the power of the Will was named as psychological death while death caused by persons interested in the inheritance was named psychological bewitchment. The female participants expressed these fears for both their husbands and for themselves. They feared to encourage their
husbands to write Wills. Their fears were that in the event that their husbands died and it came to the knowledge of their husbands’ relatives that the wife was instrumental in the writing of the Will, and then they will be blamed for their husband’s death. In this case however it is not that females fear that the writing of a Will was going to cause their husband to die but that it may just occur that death comes after the undertaking, and they may be suspected as having caused the death.

The female participants encouraged their husbands to write Wills because they did not have property of their own except for that which they jointly owned with their husbands. This position of the female participants could be explained by the empowerment theory. The theory posits that women are dependent on men because of lack of resources and are denied access to decision making. In this case the female participants could only endeavour to persuade their husbands to write Wills because they had no property. It was found that men had property which was the reason that led Britain to enact a law that required men to adequately arrange for their widows by way of written Wills (Sherrin, et al., 1980). This was the same reason that prompted the Zambian Government to enact the Wills and Administration of Testate Estates Act number 6 of 1989 (Mushota 2005; Hay and Stichter 1995).

The other form of death feared by female participants was that, it was un-usual to plan for death in the African culture and Zambian culture in particular. This fear was similar to that held by male participants. The male participants also held dual beliefs of death due writing of a Will. Like the female participants, the male participants held the views that they would die for having possession of a Will and that there was also the risk of the heir being killed.

The psychological death would result from the natural power of the Will to kill its maker. The maker of the Will would be compelled by internal premonition and intuition. Death would be pushing that particular person into making a Will.
Death by *psychological bewitchment* according to the data from male participants would be caused by their wives and children who would want to inherit their portions in the Will. The heir also risked being killed and in this case the data about this belief were the same for both female and male participants. The heir, mostly if it is a widow, would be killed through witchcraft or some other form of elimination by especially relatives of a deceased man. The relatives of the man would not be happy to let the widow inherit the property of their kin.

The difference in beliefs about the target of psychological bewitchment between female and male participants demonstrates that men and women respond differently and use different words in discussing property inheritance. For the female participants it was the male that would be bewitched for writing a Will. They believed that females would not be bewitched for writing a Will. Instead a female would be bewitched for inheriting property from a deceased husband. This can be explained by the gender difference theory. This theory posits that women and men respond differently and express different meanings in conversation.

However there were no data to substantiate the belief that one can die after making a Will. Neither was there any data about anyone who experienced someone getting bewitched because they made a Will or because they inherited through a Will. These beliefs had no empirical evidence upon which they were based. It was found that whatever beliefs people had about the Wills were based on their cultural orientation. It also meant that the beliefs of death due to the presence of a written Will or being bewitched because of having a Will were only cultural assumptions that were transmitted through folkways. Any belief then about the Wills should be understood first from the cultural context and background.

There was also no data in this study showing that the participants’ beliefs were influenced by their religious orientation or teachings. Religion then had no contribution to the beliefs about the Wills. The thin line between religious beliefs and beliefs about death can be the only reason to link the two. Death is associated with the realm of the spirit world just like
religion is. It is this common focus that sociologically links them and not that the participants expressed the connection. In his findings Himonga (c. 1989) also stated that there was no empirical evidence about these beliefs.

5.3 Non-Superstitious Beliefs
The non-superstitious beliefs, also referred to as non-superstitious factors, were influenced by a myriad of social factors that affected the belief about the Will. Social and legal education together with exposure to other cultures and societies were almost cross cutting in this category. It was also clear from the data that knowledge was lacking about how the Will operated. The participants did not know that despite having written a Will one still had unrestricted power over it, and enjoyment of their property and that they had the power and right to cancel, change or withdraw the Will they had deposited. This showed lack of social education including property rights education.

All the study sites had no legal departments or any educational or sensitisation programmes about Wills. There were no agencies that were sensitising the populace on issues of intestacy. This had left a vacuum only to be filled by baseless beliefs. If this situation is not addressed the beliefs will continue to exist among people unabated.

The non-superstitious beliefs ranged from those issues external to the individual to those that were internal. Six categories were drawn from these beliefs as follows:

a. Social factors.
b. Economic factors.
c. Legal factors.
d. Emotional attachment beliefs.
e. Lived experience beliefs.
f. The historical origin of written Wills.

5.3.1 Social Factors
The social beliefs were actually identified as issues that individuals could have control over. These social beliefs included personal inertia, prioritising events like marriage and
bearing children up to the last child before deciding on making any Will. The other characteristic was lack of futuristic mind. No deliberate effort seemed to be considered and aspired for and taking action towards that future. It was like things were being left to chance. In all this it was still evident in the sample that certain fear existed about the management of their property after death. It was the action to address the uncertainty that was left without attention, like there was nothing to be done about it.

This action was referred to by Bowe and Parker (1960) as ‘procrastination’ and this concept was also found in the data. The other concepts found explaining this same attitude were laziness and lacking serious thought of the need of a Will. This was the action of buying time by individuals in the hope to reach a point of satisfaction when they would convince themselves that at that point they would be ready to make their Will. But that point would never be attained by people as it kept advancing forward because it was not defined clearly. More so there was no visible compelling obligation on the individuals to meet that requirement. Some wanted to stick to the old ways for they viewed them as better.

It was also found that social education in testamentary preparation was lacking. Social education is the process through which cultural norms and practices are transmitted through deliberate nationwide programmes. In Zambia social education has been done on HIV and AIDS as was observed by the participants. There was no one in the sample that was exposed to similar social education like that on HIV and AIDS. Social education can be at various levels and through different institutions. Some of these institutions are the family, education, religion, employing organizations and the media. These are some of the possible institutions that can be used by the Ministries of Justice and Legal Affairs, Gender and Child Development, and the Judiciary and other service providers. Institutions like the non-governmental organisations (NGOs) can also play a major role in sensitising people. But it was found that these ministries and service institutions did not carry out deliberate social education of the people. Among other things these institutions should be utilized in promoting social education about family property rights, promotion of family values and use of written Wills for passing ones’ inheritance.
It was also found that the socialisation process especially that which prepared women for marriage encouraged them not to own property. Data showed that women hoped to inherit property from their husbands, and that women did not to hope to create their own property. This social action can be explained by the socialisation theory. The socialisation theory postulates that society prepares boys and girls differently. Society assigns roles to boys and girls as they grow making them believe that as boys or girls they can only do certain things that are done by people of their sex (Coltrane 1998). Data in this study showed that female participants were inclined to jointly owning property with their husbands because they were taught like that as they were being initiated to enter into marriages. This behaviour was acceptable for them because it was expected to yield positive rewards which meant securing their marriages. Chafetz (1990, p. 25) referred to these actions as conforming to purposefully taught socially constructed ‘gender-appropriate ways of thinking, feeling and acting’.

While data showed that women craved for joint ownership of property, the opposite was true for men. There was only one male participant that had jointly owned property with the wife from the eighteen male participants. Data also indicated that men still reserved the preserve of owning property to themselves and deciding whom to give it to. Data showed that some male participants had registered their plots not in their wife’s name but in their daughter’s name. This was because men always want to be in control. It was for that reason that data further indicated that some men would give property, like a farm, to the spouse, but will not register it in her name. This data showed the working of the social construction of gendered property ownership. Again this behaviour is acceptable to men when explained by the socialization and empowerment theories. The socialization theory says that men are socially predestined to own property while advances that this is the status quo that must be reversed or broken.

5.3.2 Economic Factors
The economic beliefs were basically hinged on income and value of the property held. Data indicated that some participants felt they had very little income as civil servants. Their income was insufficient for them to create their aspired wealth. Where they had
some amount of property they felt it did not have economic value. The participants therefore felt that property with little economic value was not worth to write a Will for. Bowe and Parker (1960) reported in their findings that some wage earners postponed their Will making hoping to do that after they have increased their wealth.

The argument about the value of the estates can be sustained as it agrees with both the colonial law as recorded by Coissoró (1966) and the current High Court Subsidiary Legislation Order XLVI. The Order provides that where the total value of the estate of a deceased person does not exceed five hundred thousand kwacha, it will not be appropriate to share such estates. The widow or widower or next of kin whoever would apply in their personal capacity would be granted authority to receive such estate without dividing it. This means the law was saying that, the property with total value below the prescribed amount would not need to be shared among different family members. In that sense even a Will would be revoked if it divided such estates.

But it was found that some participants had property like land and motor vehicles whose values were above the minimum prescribed value of five hundred thousand allowable to be shared. What this means then is that economic beliefs are relative and contextual. It means what others may perceive as an economic barrier others may see it differently.

The issue then here hinged on education of the people on the various ways a Will could be used. The provision of the law cited above did not prevent the employment of a Will when the value of the property was less than five hundred thousand. What it did in fact was to provide opportunity to make a Will that would not share the property among individual beneficiaries. It allows the maker of the Will to leave the property as one whole for the nuclear family. That is the reason for the law’s proviso to grant such property to the widow, widower or the next of kin, that applies to the Court in person without dividing it.

The economic factor as a hindrance to making of Wills may not be sustained in so far as income earning is concerned. Data indicated that both female and male participants cited
lack of property as reason for not writing Wills. But these participants were all in steady income earning employment of the civil service. The empowerment theory may explain this in terms of conscientisation that both women and men need to take control of their own property. Without conscientisation women especially, even when they have access to resources, will continue to feel attached to their husbands and that they need to develop property together. The empowerment theory identifies access as one of the five levels of equality which are important in the process of women development. It identifies access to resources and services as one major obstacle to women’s development.

In this case women and men had incomes with which they were at liberty to develop their own properties independent of their spouses. In so far as earning income the behaviour of women participants in this case can be further understood from the empowerment theory in terms of lacking self-reliance knowledge and confidence to shape their own life. Again here it combines with socialisation that espouses that the man is the head of a family and therefore has a duty of providing for the family (Chafetz, 1990).

The economic factor can be sustained when explained in terms of division of labour between women and men. Under this argument it is postulated that women are relegated to low income jobs while men take up high income jobs. Taking this thought the issue becomes sustained in favour of women participants that they could not write Wills because their incomes were too little to allow them acquire personal incomes. But this may not again apply in blanket form to all the female participants. This is because most of these participants were high ranking officers, whose positions are deliberately withheld.

Probably the exchange theory may also explain the phenomenon of women not writing Wills. This theory postulates that partners’ corporation will be on the basis of reciprocal exchange where both the man and woman earn income but the woman ‘balance the exchange by offering deference to, or compliance with, the demands of their spouses’ (Chafetz, 1990, p. 48). In such a relationship the female’s income may not be employed to acquire property of her own as she may be constrained by the husband. In this case the
husband through the exchange process controls what the wife can acquire as property, a system which Frances Power Cobbe referred to as *legitimation of theft* (Brophy and Smart 1995, p. 8).

Whereas the women’s predicament may be attempted to be explained using the gender empowerment and exchange theories the men’s economic hindrance factors defy these theories. They have power both at the micro and macro levels and have access to better income.

5.3.3 **Legal Factors**

The legal beliefs hinged on lack of capacity to pay the legal fees for the services of a lawyer to make a Will. The other problem was the inadequate legal knowledge about the effectiveness of the inheritance law. There were also some suspicions on the procedural requirements, and that the legal Will and the legal process were susceptible to fraud. In the United States of America, Bowe and Parker (1960) on the contrary found that people avoided legal Wills because they did not want to be involved in the legal complications and not suspecting Wills to be fraudulent.

Whereas these legalist problems seemed to be fundamentally different from each other, on a closer look they meant the same thing. They meant inadequate knowledge of the law and its procedure. In a situation where people came to know the law they would appreciate that government legal aid services were not expensive because government provided even free legal aid services. Where they also knew their law they would also learn to trust it. While admitting that even the law was not immune from manipulation, avoiding its use was also not the answer. The answer lies in engaging it and not avoiding it. That was one way through which it could be improved by making it to provide for the needs of society. In other words law must be dynamic in order for it to be relevant in time and space. It was clear in this study that there was no keen interest to engage the inheritance law to make it serve the Zambian society by both the practitioners and the users. The best example of this disinterest from the practitioners’ point of view is the failure of the Chief Justice’s office to produce the local court procedure for uniform
dispensation of inheritance justice at local court level irrespective of ethnicity of the involved parties (Mushota 2005). Similarly the disinterest in the sample was also manifested through the large number, thirty one out of thirty six participants, who said they avoid to engage in Wills and Administration of Testate Estates law citing various reasons.

The lack of legal knowledge as observed among the participants may be explained by the socialisation theory. The participants were socialised not to engage into legalising their properties. The missing of the social education denied them the opportunity to explore the laws provided by the state.

5.3.4 Emotional Attachment Beliefs
The emotional attachment beliefs were those attitudes where individuals had strong bonds towards their extended family members in preference over their nuclear family. Individuals with this form of beliefs expected their extended family members to also benefit from their estates’ inheritance and not only their nuclear family. It was among this category that some felt that the Wills and Administration of Testate Estate Act was contrary with the African culture. The African culture looked after extended family members and ensured that there are no street children. In other words inheritance through this law for them contributed to the extended family breakdown, a thing that was negative to the Zambian Society. For this category the Intestate Succession Act was good because it reflected the African and Zambian way of life that took care of extended family members.

This feeling can be explained by the socialisation theory again. The participants were socialised to regard their nuclear families as not being their responsibility. This form of socialisation was and still is present in some societies of Zambia. It is a type of socialisation, especially among matrilineal tribes of the southern and eastern parts of Zambia, which advance the teachings that a man’s children are his nephews and nieces. It goes further to say that a man’s biological children belong to his wife’s brothers. These customs are common among the matrilineal tribes (Mushota 2005). The patrilineal
system, where children inherited from their father, were least practiced among the Zambian tribes. The third system, as practiced among some tribes of western Zambia, was that of a mixture of matrilineal and patrilineal system. In this system children inherit from both their father and mother. This system, like the patrilineal system, was also not common among Zambian tribes. In Zambia therefore the common practice, a practice that is common to a large number of tribes is the matrilineal system. The socialisation therefore emphasises that a child belongs to his or her uncle and hence the data showed that uncles, aunties and nephews inherited property in the traditional system.

5.3.5 The Lived Experience Beliefs
This model of belief was one important factor mentioned which did not occur to the majority of the participants. This was the observation made that people may want to make Wills but they lacked family lived examples. It was elaborated that someone that might want to make a Will gets discouraged if there were no examples of family members that had written Wills before to draw lessons and strength from. The meaning here was that in the environment with beliefs about death because of making a Will one needed to see or know of someone that made a Will and assess the benefits derived and know the consequences that arose from that action. But people did not know any family members that made written Wills.

This was a very important submission because from the five Will holders in the sample, four cited lived experience as their motivator to write their Wills. Two female Will holders learnt from their parents to write Wills. The third female Will holder witnessed difficulties which prompted her to think of her property and her children. She ended up with a decision that a written Will was good for her property and her children. Similarly a male Will holder passionately recounted the experiences he witnessed that made him to decide to write a Will.

The lived experiences can also be explained in socialisation terms. The two female Wills holders were socialised by their parents to write Wills. The motivation was strong for them especially that the holding of Wills by their parents defied the myth that postulates
that such action causes death because their parents were still alive. If people learn from their significant others this becomes a valuable view (Thomas, 1995; Giddens 2001). In a family where some deceased members have in the past left Wills, two things are likely to happen. One thing could be that, Wills would be easily accepted by the extended family members. The second thing would be a wide and ever increasing usage of the written Wills in the family. Family members of such families may not encourage interference in the inheritance of nuclear family members.

5.3.6 The Historical Origin of written Wills
The next factor was that, Wills were not original to the African culture. This is the understanding that making of Written Wills constituted an un-African social behaviour. Data showed that participants believed that Wills were foreign to the African culture. There was little contradictory data from the participants that showed that Africans used testamentary power especially oral Wills.

In comparison to the literature, the view that Wills were un-African was a contradiction. Writing came with colonisation and colonial education. Certainly there could be no written Wills before people were able to write. But literature indicated that African cultures predestined heirs to property. The heir would normally be first born son (Radcliffe – Brown and Forde 1965). Although the Will was based on an oral culture; property was passed to members in the nuclear family a practice that would have been improved by backing it with documented legal evidence in the form of a written Will that can be referred to later. The comparison of literature and data show historical information gap in the participants. This means therefore that the process of socialisation they underwent through did not include transmission of customary inheritance practices. It is for this reason that it is argued that property grabbing is variant misinterpretation of the customary system because the customary inheritance system did not result in surviving families becoming destitute. It was because of such knowledge gaps that made people fail to explain what exactly they believed in and what they wanted to do for their inheritance.
5.4 The Fluid Current Inheritance Practice

The general opinion of the participants was that the practice was alien and learnt from foreign culture. However, it was generally admitted to be a good culture. From the foregoing it was found out that the participants found it difficult to embrace this culture because of the superstitious beliefs and non-superstitious beliefs discussed above. They were in a state of disequilibrium in which all options were favoured but action remained biased towards the most influential, the customary practice. However this customary practice was a target of alteration from its original form to suit what they felt was better for them. They wanted to allow their children first, and then second their spouses before their parents and relatives could also have their shares. It was how to reconcile these groups and interests that caused challenges amidst economic, social and legal beliefs, which have been discussed above as non-superstitious beliefs.
CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

This study explored the factors that caused Zambian urban civil servants in selected districts not to write Wills to distribute their property after their death. It was designed as a qualitative study. The study was conducted in three districts of Zambia namely; Lusaka, Kafue and Kabwe. Simple random sampling design was used to select the study Ministries. The three districts (Lusaka, Kafue and Kabwe) were conveniently selected due to time and cost considerations. The participants were purposively sampled through the Human Resource Departments of the institutions where the study was carried out. Thirty six personal interviews were conducted.

The study was necessitated by the gap in knowledge of the use of written Wills for distribution of property for inheritance. Whereas the knowledge about the negative effects of customary inheritance practices and property grabbing was well documented, it was not the case with the use of the written Wills. It was not documented what caused people not to use their testamentary power. It was desired to know whether people in the civil service possessed any negative beliefs about written Wills. These gaps needed a study to fill the knowledge. This study therefore, was an effort to build on the existing data about family law and property rights.

This study revealed several things. It has been revealed that Kabwe High Court did not maintain a Wills registry and therefore people in Kabwe had to use private organisations and institutions or come to Lusaka for depositing their written Wills. It was also revealed that there was high probability of intestacy in study sample as most (thirty one out of thirty six) participants were found without written Wills. The other finding was that participants had little faith in the legal system. They also had little knowledge about the statutory inheritance law. It was also interesting to note that, men believed that their spouses and children could bewitch them so as to inherit property. But the same belief
was not expressed by women. The social factors that negatively affected the use of the Wills were found to be diverse.

The findings about the beliefs were classified into two broad categories: the superstitious beliefs; and the non-superstitious beliefs. It was also found out that studying intestacy in Zambia requires a nationwide study because of the complex variety of organisations and institutions people use to make and deposit their Wills.

It was recommended that social education must be undertaken to sensitisise not only civil servants but all Zambians. The Ministry of Justice and Legal Affairs, the Judicially, the Ministry of Gender and Child Development and other service providers including non-governmental organisations can take the lead in undertaking social education.

Programmes must be made to promote the use and acceptance of the written Wills. The mixed perceptions about Wills required consented efforts from customary and state institutions, private and non-governmental organisations to redress them. They should design programmes to create the perception that a written Will promotes family law and property rights of individuals in a family.

The judiciary should devise sensitisation programmes to remove the negative tag attached to its system of handling inheritance petitions. If people have no confidence in a system they cannot use it and it becomes irrelevant. The judicial system must make itself relevant by coming close to the population through sensitisation programmes.

The Wills register must provide more data such as the sex, employment status (public service or private sector) and names. This should include those making and depositing their Wills through lawyers or law firms or any such mandated organisation.
REFERENCES


‘Wait a minute pastor’ 2012, television broadcast, Muvi Television, 19 Feb. 12.


Zaloumis, F. M n.d., Approaches to gender equality under customary law, viewed 8 February 2011,


Appendix A – Student Introductory Letter

THE UNIVERSITY OF ZAMBIA
SCHOOL OF HUMANITIES AND SOCIAL SCIENCES
GENDER STUDIES DEPARTMENT

TO WHOM IT MAY CONCERN

Mr/Ms TERRY R MOOND Computer Number 530503434

is a student of M.A. Degree programme in Gender Studies at the University of Zambia for the academic year January 2011 to January 2012. One of the requirements of this programme is to conduct research in his/her relevant area of interest.

I would be very grateful if you could allow him/her to interview you and have access to your policy and any other documents.

Yours faithfully

Dr. T. Kusanthan
HEAD – GENDER STUDIES DEPARTMENT
Appendix B – Ministry of Education, Science, Vocational Training and Early Education Introductory Letter

TO: The District Education Board Secretary, LUSAKA  
The District Education Board Secretary, KAFUE  
The District Education Board Secretary, KABWE

RE: INTRODUCTORY LETTER: MR. TERRY R. MOONO

The bearer of this letter, Mr. Terry Moono is a student at the University of Zambia. He is undertaking a research entitled ‘The Gendered Inheritance: A Study of Intestacy among Urban Civil Servants in Zambia’. The method of his research is personal in-depth interviews and focus group discussions (FGDs).

The purpose of writing to you is to request your office (s) to render him the assistance he needs in carrying out his research.

G. Kamfwa  
Acting Chief Human Resources Management Officer  
for/Permanent Secretary (HRA)  
MINISTRY OF EDUCATION
Appendix C – Ministry of Transport, Works, Supply and Communication Research Authorisation

6th July, 2011

Moono R. Terry,
Department of Gender Studies,
University of Zambia,
LUSAKA.

RE: APPROVAL OF RESEARCH PROPOSAL

The Graduate Studies Committee of the School of Humanities and Social Sciences has approved your research titled The Gendered Inheritance: A Study of Intestacy Among Urban Civil Servants in Zambia and your supervisor is Dr. A. Namakando-Phiri.

You are required to contact your Head of Department or Supervisor to guide you as to the next course of action.

Congratulations.

J. Simwingsa (PhD)
ASSISTANT DEAN (POSTGRADUATE), HSS
cc: Director, DRGS
Dean, HSS
Head, Department of Gender Studies

[Handwritten note: Kindly award the student a travel and interview opportunity for your research purposes. Thank you for your considered advice and support.]

C.R. M., 8-07-13
Appendix D – Ministry of Commerce, Trade and Industry Request to Conduct Research Letter

Terry R Moono
The University of Zambia
School of Humanities and Social Sciences
Department of Gender Studies
P.O. Box 32379
LUSAKA

January, 2013

The Permanent Secretary
Ministry of Commerce, Trade and Industry
LUSAKA

Dear Sir/Madam,

REF: REQUEST TO CONDUCT RESEARCH AT YOUR MINISTRY

I make reference to the subject matter.

I am a University of Zambia student undertaking a Masters of Arts programme in Gender Studies. One of the requirements for this programme is to conduct research in an area of interest. My research is about property inheritance and it is titled The Gendered Inheritance: A Case Study of Intestacy among Civil Servants in Selected Districts. Find attached to this letter my University of Zambia student introductory letter and the approval of the research.

The data collection method involves personal interviews. It is therefore requested that I interview eight selected officers at your Ministry. The selection of these officers may be done by your office or as you may wish to advice. The data sought is non-official but personal experiences. Find attached hereunder the interview guide.

May I take this opportunity to convey to you the compliments of the season.

Yours faithfully

TERRY R MOONO
Appendix E – Participant Letter of Consent

THE UNIVERSITY OF ZAMBIA
SCHOOL OF HUMANITIES AND SOCIAL SCIENCES

Dear Participant,

REF: CONSENT TO PARTICIPATE IN THE STUDY: YOURSELF

I, Moono, Terry R, the research student, write to inform you that you have been purposively selected from the staff nominal roll as one of the participants to participate in this study entitled The Gendered Inheritance: A Case Study of Intestacy among Civil Servants in Selected Districts. Participation is voluntary. You have the right to withdraw at any time. However, I hope you will participate to the end of the study because your experiences and views are important. Your participation will be through attending an oral personal interview with the student researcher.

The information from this study will be useful in filling the knowledge gap about the factors that influence Zambian urban civil servants in deciding for and against the making of the Wills. It will also help promote gender equality in property rights.

The data you will provide will be confidentially handled as required in academic study.

For any clarifications contact the Head of Department, Gender Studies Department, University of Zambia, P.O. Box 32379, Lusaka, phone: (0211) 295216.

(i) Interviewee Name.................................................................
Signature............................................................... Date .........................
(ii) Researcher Name.................................................................
(iii) Signature................................................................. Date .........................
Appendix F – Personal Interview Guide

The Gendered Inheritance: A Case Study of Intestacy among Civil Servants in Selected Districts

PERSONAL INTERVIEW GUIDE

SECTION A – PARTICIPANT TO FILL IN – DEMOGRAPHIC DETAILS

Instructions: Tick [✓] and or enter details that describe you.

1. Participant no………... 2. Date of interview……...
3. Place of interview…………. 4. Sex………………………
5. Marital status……………… 6. Ethnicity………………
7. In which age range are you?

|---------|---------|---------|---------|---------|---------|---------|-------------|

8. Highest education attained……………………
9. In what type of marriage are you?
   a. Customary monogamous marriage [ ]
   b. Customary polygamous marriage [ ]
   c. Statutory marriage [ ]
   d. Other (specify) ………………………………………….

10. How many marriages have you had? 1 2 Above 2

11. How many children do you have? …………………
12. How many children do you have outside your current marriage? ……..
13. The location (town) of your residence………………………………….
SECTION B – TO BE ADMINISTERED THROUGH PERSONAL INTERVIEWS

FACTORS AFFECTING MAKING OF THE WILLS
1. Do you have any views (observations) about inheritance practices in Zambia?
2. If yes can you share with me your views (observations) about inheritance practices in Zambia?
3. Do you have any feelings (emotions) regarding writing of the Wills?
4. If yes to question 3, could you share with me your feelings (emotions) regarding writing of Wills?
5. Are you aware of the statutory law that provide for making of the Wills?
6. What are your views about the statutory inheritance law that provides for making of the Wills?
7. In your culture how are estates of a person that has passed on given for inheritance?
8. Are you going to use the cultural system to pass your estates for inheritance in the event that you passed on?
9. If no to question 5 what system are you going to use to pass your estates for inheritance in the event that you passed on?
10. If yes to question 5 why are going to use the cultural system to pass your estates for inheritance in the event that you passed on?
11. Do you have a Written Will?
12. Since you answered ‘no’ to question 8, do you have any one in mind that you would wish to inherit your property in an event that you passed on?
13. What will you do to prepare for that person to inherit your property?
14. Since you answered ‘no’ to question 8, do you think there are things that hinder civil servants from writing Will?
15. What are these things that may hinder people from writing Wills?
16. You answered ‘yes’ to question 8, why did you make a Will?
17. If no to question 8 why have you not written a Will?

This marks the end of the interview. I thank you!