IN THE HIGH COURT OF ZAMBIA **2023/HPEF/38**
AT THE ECONOMIC AND FINANCIAL CRIMES REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
FINANCIAL CRIMES DIVISION
20 DEC 2024
REGISTRY 1
P.O. BOX 50067, LUSAKA

IN THE MATTER OF: **SECTIONS 29 & 31 OF THE FORFEITURE OF PROCEEDS OF CRIME ACT NUMBER 19 OF 2010**

AND

IN THE MATTER OF: **SECTION 71(1) OF THE FORFEITURE OF PROCEEDS OF CRIME ACT NUMBER 19 OF 2010**

BETWEEN:

ANTI-CORRUPTION COMMISSION **APPLICANT**

AND

IN RE PROPERTY:

Plot No. LUSAK/LN_24983/3 situate Kingsland City;
Plot No. F/1504/A situate Chisamba;
Plot. No. F/378a/11 situate in Ibex Hill;
Bank of Zambia Government Bonds Issue No.01/2012/BA;
Treasury Bill Issue No. 11/2021TBs;
Madison Finance Fixed Term Deposits Unit No. 1140446;
Assorted jewels;
TAFE Tractor 7515 75 HP- unregistered;
Plough Tractor BD Mounted AF3;
Harrow Disc BD GHO-R Mounted 16;
Planter BD PLB- 4 Mounted Row;
Sprayer Room Jacto (M) Condor M12
Trailer 5TN Steel Deck; and
Toyota Allion Reg. No. 7ZM.

FAITH MARGRET CHISELA MUSONDA **1ST INTERESTED PARTY**

SELA PROPERTY INVESTMENTS LIMITED **2ND INTERESTED PARTY**

COVENANT BROADCASTING COMPANY **3RD INTERESTED PARTY**

LIFE TELEVISION LIMITED **4TH INTERESTED PARTY**

SAMUEL LISIBANI MULOZI **5TH INTERESTED PARTY**

Before: Honourable Justices S. M Wanjelani, I. M. Mabbolobbolo and S. V. Siloka 20th day of December, 2024.

For the Applicant: G.M. Muyunda with T. K. Maimisa, Anti-Corruption Commission

For the 1st - 4th Interested Parties: N. Botha, Messrs. Makebi Zulu Advocates

For the 5th Interested Party: L Kasali, Messrs. Ferd Jere & Company.

JUDGMENT

Wanjelani S. M., J, delivered the Judgment of the Court

Cases referred to:

1. *Nkobi Holdings Limited and Another v. The State (CCT86/66 (2008) ZACC7);*
2. *National Crime Agency v. Mrs. A (2018) EWHC 2532;*
3. *Johanes Kenneth Siogopi (TA Nam Transport Co. a Partnership) v Director of Public Prosecutions (Appeal 196 of 202) 2022 ZMCA 45 (28 July 2022);*
4. *National Director of Public Prosecutions v Kwetana (4034/2021) [2022] ZAECMKHC 35 (10 June 2022);*
5. *Anti-Corruption Commission v. Barnett Development Corporation Limited (2008) ZR 69, Vol. (SC);*
6. *Ethics and Anti-Corruption Commission v. Patrick Ochieno Abachi and 6 Others (2021) EKLR;*
7. *Sydney Mwansa v. the Director of Public Prosecutions, Appeal No. 276/2021;*
8. *Oscar Chinyanta and 31 Others v. Alasia Building Construction Ltd and Another, Appeal No.158/2015;*
9. *The Attorney General v. The Law Association of Zambia, (2008) 1 ZR 21;*
10. *Teckla Lameck and Another v. President of Republic of Namibia and Others, Appeal No. 54 of 2011;*

11. *National Director of Public Prosecutions and Another v. Mohamed NO and Others [2002] ZACC 9 (12 June 2002);*
12. *The People v. Austin Chisangu Liato, Selected Judgement No. 21 of 2015; and*
13. *Asset Recovery Agency v. Lillian Wanja Muthoni t/a Sahara Consultants & 5 others [2020] eKLR Application 58.*

Legislation referred to:

1. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010 of the Laws of Zambia.*
2. *The Rules of the Supreme Court 1999 Edition*

1.0 INTRODUCTION AND BACKGROUND

1.1 The Applicant commenced this Matter on 7th November, 2023, by way of Originating Notice of Motion filed pursuant to **Sections 29, 31** and **71(1)** of the **Forfeiture of Proceeds of Crime Act,** seeking an Order of the Properties listed in the Citation of this Matter.

1.2 The 1st Interested Party filed an Affidavit in Opposition on her own behalf and on behalf of the 2nd and 4th Interested Parties on 28th February, 2024, when the Matter was scheduled for hearing.

1.3 On the same date, the 4th Interested Party raised a Preliminary Issue regarding the legal personalities of some of the Interested Parties, and the Court reluctantly allowed it when the Matter came up for hearing on 2nd April, 2024, and directed the Applicant to respond to the Preliminary Issue.

1.4 In a Ruling dated 16th April, 2024, the Court determined that the irregularities were not fatal but

curable, and granted Leave to the Applicant to amend its Originating Process and the Matter was then scheduled for hearing of the substantive Matter to 22nd May, 2024.

1.5 However, on 21st May, 2024, the 3rd and 4th Interested Parties raised another Preliminary Issue seeking to dismiss the Matter for irregularity alleging that the Applicant had not complied with the Court's directive in the Ruling dated 16th April, 2024, as it only amended the Affidavit in Support of the Application but not the Originating Notice of Motion. On the same date, they also filed their Affidavit in Opposition to the Applicant's Amended Affidavit in Support.

1.6 On 22nd May, 2024, when Court was scheduled to hear the substantive Matter the Interested Parties' Counsel forcefully argued that the Preliminary Issue raised by the 3rd and 4th Interested Parties went to the root of the Matter. The Court noted that the Preliminary Issue which had been filed but not on the Court Record, was raised belatedly but allowed the Applicant to respond by 31st May, 2024 and a Reply by the Interested Parties to be filed by 5th June, 2024, and the Ruling would be delivered on 26th June, 2024 or a date to be communicated. It was further agreed that depending on the outcome of that Preliminary Issue, the Matter would either be dismissed or if not, the Court could then proceed to deliver its Judgment based on the Process on Record.

1.7 However, on 5th June, 2024, the 3rd and 4th Interested Parties' Counsel sought Leave to extend the time within which to comply with the Court's directive to file a Reply and in a Ruling dated 21st June, 2024, the Court declined to do so. Interestingly, on that same date, the Interested Parties filed what was termed as "Notice to Abandon Applications" with respect to the Application for extension of time and the Application to dismiss the Matter for irregularity due to non-compliance. The Court then scheduled the Matter for Judgment on 27th September, 2024.

1.8 Yet again, on 13th September, 2024, the Interested Parties filed Summons to dismiss the Matter alleging, non-compliance with the Court's direction in the Ruling of 16th April, 2024 by the Applicant in filing the Amended Originating Process and raised a new additional issue that the 3rd and 4th Interested Parties were not served with the Originating Notice of Motion as required by **Section 30(a)** of the **Forfeiture of Proceeds of Crime Act**.

1.9 As the narration above shows, the 3rd and 4th Interested Parties filed their Affidavit in Opposition to the Amended Affidavit in Opposition on 21st May, 2024, and raised a Preliminary Issue on the same day, which they abandoned on 21st June, 2024. In that Preliminary Issue, the aspect of lack of service was not raised and it was being raised almost two and half

months after abandoning their second Preliminary Issue.

1.10 We did not give a date for the 3rd and 4th Interested Parties' last Preliminary Issue as we found it prudent to deal with it in the course of this Judgment.

2.0 APPLICANT'S AFFIDAVIT AND SKELETON ARGUMENTS

2.1 The Applicant filed an Affidavit in Support of the application sworn by **Ferguson Kombe**, an Investigations Officer in the employ of the Applicant and having conduct of this case. He deposed that on 5th November, 2021, the Applicant received a Complaint from an anonymous person, alleging that the 1st Interested Party was in possession of property suspected of being proceeds of crime, being, Plot No. LUSAK/LN 24982/3 (C5,1#, D4B), Kingsland City, Lusaka, which was bought at a cost of US$180,000.00. He averred that the said Complainant also alleged that other properties are hidden in the name of Chimuka the friend to the 1st Interested Party and Miyanda Mulambo, a business associate. A copy of the Complaint was exhibited and marked **"FK1".**

2.2 The Deponent stated that he then went to conduct a search at Kingsland City where he discovered that the 1st Interested Party had signed a Contract of Sale for Plot No. LUSAK/LN 24982 /3 (C5, 1#, D4B) in the sum of One Hundred and Eighty-Five Thousand United States Dollars (US$185,000.00) and that the

said Contract of Sale was witnessed by Miyanda Mulambo, as per exhibit **"FK2".**

2.3 He added that he also discovered that the 1st Interested Party had paid a total cash sum of One Hundred and Forty-Four Thousand, Five Hundred United States Dollars (US$144,500.00) towards the purchase price of Plot No. LUSAK/LN_24982/3 (C5, 1#, D4B), Kingsland City, Lusaka, as shown in the Kingsland Purchase Card and Client Statement marked **"FK3a** and **b"**.

2.4 The Deponent averred that his investigations also established that the 1st Interested Party had also purchased a Farm in Chisamba, being Subdivision of Farm No. F/1504, through the 2nd Interested Party, a Company in which the 1st Interested Party is a Director and majority Shareholder.

2.5 The Deponent avowed that upon perusal of the Contract of Sale for the purchase of Subdivision No. F/1504, Chisamba, he discovered that it was signed by the 1st Interested Party for and on behalf of the 2nd Interested Party as the Purchaser, with the purchase price of the Farm being ZMW4, 600,000.00. He added that according to a Statement by George Handa, one of the Vendors, the Purchase Price was paid in full, in three instalments. The Contract of Sale and the Statement from George Handa were produced and marked **"FK5"** and **"FK6a-b"** respectively.

2.6 The Deponent vied that consequently, he conducted a search at the Ministry of Lands where he discovered that Mike Sifuya, Mutandazo Handa, Nosipa Handa and George Handa had assigned Property No. F/1504/A to the 2nd Interested Party as per Lands Printout marked **"FK7"**.

2.7 He stated that investigations further revealed that the 1st Interested Party bought Subdivision No. F/378a/11, Ibex Hill, Lusaka at a price of One Hundred and Seventy Thousand Kwacha (ZMW170,000.00) from Sam Mulozi but was not changed into the 1st Interested Party's name as per the Contract marked **"FK8a-b."**.

2.8 He stated that he then conducted a physical inspection of the property and discovered that Covenant Broadcasting Company and Life Television were operating on the said property. He vied that a search at the Patents and Companies Registration Agency (PACRA) revealed that the 1st Interested Party is a Director and Shareholder of the 3rd Interested Party as per PACRA Printout exhibited as **"FK9"**.

2.9 The Deponent added that a search at PACRA regarding the 4th Interested Party revealed that the 1st Interested Party is not a Director or Shareholder in the Company, but that the correspondence from the Independent Broadcasting Authority (IBA) shows that the 1st Interested Party was the Station Manager.

2.10 He stated that he discovered that the 4th Interested Party is registered with IBA and had since been issued with a "Content Service Provider Licence." He vied that he interviewed the Managing Director for the 4th Interested Party who told him that the 1st Interested Party was the owner of the 4th Interested Party Company and exhibited the Statement of Malekano as **"FK12a-b"**.

2.11 The Deponent stated that consequently, he recommended that a valuation of Plot No. F/378a/11, Lusaka be conducted by the Government Valuation Department and the valuation revealed that the said property is worth Three Million Five Hundred and Sixteen Thousand Kwacha (ZMW3,516,000.00).

2.12 He added that during investigations, he established that the 1st Interested Party also had an Account with the Bank of Zambia (BOZ) Account No. INZAX1820438/11/100 which was opened following an application to procure a Government Bond with Bank of Zambia. That the said Account has Government Bonds worth ZMW3,140,000.00, issued for a 10-year period and Treasury Bills worth ZMW1,100,000.00. He produced a copy of the Bank of Zambia "Holder's Statement" for both the Government Bonds and Treasury Bills as exhibit **"FK14"**.

2.13 It was further averred that a search conducted at First National Bank (FNB), established that the 1st Interested Party has an Account No. 62482557322

with the said Bank which was opened on the 7th of July, 2014 and that a copy of the said FNB Mandate File shows the particulars of the 1st Interested Party.

2.14 The Deponent added that a number of suspicious cash deposits were made into the said Account, the aggregate of which was used for the purchase of a facility referred to as Fixed Term Deposit which was to mature on 30th August, 2022, worth ZMW1,219,110.20. To this end, he produced a copy of the Mandate File, the Term Deposit Certificate No.11 from Madison Finance Limited and a copy of the Bank Statement from FNB as exhibit **"FK16a-b."**

2.15 He further deposed that during the search at the 1st Interested Party's house in New Kasama, some jewels were seized and were handed over to the Applicant that are valued at US$5000-US$5500, as per the copy of the Valuation Report from the Ministry of Mines Minerals and Development marked as **"FK17."**

2.16 The Deponent vied that he received additional anonymous intelligence information that the 1st Interested Party had bought farming equipment from Saro Agro Equipment Limited Equipment Limited and had paid for it in cash. He stated that consequently, he caused a Warrant of Access to be issued to Saro Agro Limited on 9th November, 2021, and a search was conducted at Saro Agro for purposes of establishing the veracity of the intelligence information.

2.17 The Deponent stated that he discovered that indeed the 1st Interested Party had bought the agricultural equipment from Saro Agro Equipment Limited valued at US$54,844.53 and it was paid for in cash and these were:

i. TAFE tractor;
ii. Plough;
iii. Harrow Disk;
iv. Sprayer Boom Jacto (M) Condor; and
v. Trailer.

as per exhibit **"FK18a-c."**

2.18 He added that when he perused through the Invoices and Receipts, he discovered that the agricultural equipment was delivered at a Farm in Kabundi area in Serenje District and that the said Farm is on customary land and the said equipment was there. He vied that consequently, the said Farm was restricted on 19th May, 2022, as per Restriction Notice marked **"FK19"**.

2.19 He deposed that he then inquired into the sources of income of the 1st Interested Party and the inquiry revealed that she was employed by the Zambia National Broadcasting Corporation (ZNBC) and Zambia Development Agency (ZDA) and had the net earnings of ZMW825,977.00 and ZMW587,820.02, respectively, from January, 2012 to 2020 bringing the total to ZMW1,413,797.20. He produced copies of pay slips from the said employers as exhibit **"FK20a-b."**

2.20 He added that his investigations also revealed that the 1st Interested Party is currently employed at Export Trading Group (ETG), where she has been drawing a salary from January, 2020 to December, 2021 and the net earnings for that period is ZMW 720,000.00.

2.21 In his further deposition, the Deponent avowed that he also conducted a search at the Patents and Company Registration Agency (PACRA) for purposes of establishing other sources of income for the 1st Interested Party and as per exhibit **"FK21a-f,"** it revealed that the 1st Interested Party is either a Shareholder or Director or both in the following Companies:

i. Vintage Services;
ii. Rainbow Company Limited;
iii. Gold-Ore Company Limited;
iv. Clear Icon Media Consultants;
v. Spick and Span Launromat Services; and
vi. OCK Investment Limited.

2.22 He stated that he conducted a physical search at the registered physical addresses as indicated in the PACRA Printouts and established that the mentioned Companies were not operating from the said addresses.

2.23 The Deponent added that he extended his search to the Zambia Revenue Authority (ZRA) to establish whether the said Companies were Tax compliant and he discovered that the following Companies were not

compliant with any tax types: Covenant Broadcasting, Rainbow Promise Academy, Gold-Ore Company Limited, Sela Property Investment, Muntanyalwa Investments, Clear Icon Media Consultants, Spick and Span Launromat Services and OCK Investment Limited as per Status Report marked "**FK22"**.

2.24 He deposed that he established that Vintage Services Limited was remitting the requisite taxes to ZRA but was not submitting the Returns.

2.25 He added that he conducted another search at Indo-Zambia Bank, Manda Hill Branch, which revealed that the 1st Interested Party holds two Bank Accounts; a Dollar Account No.0141031000303 and a Kwacha Account No.0141030002051, opened on 27th August, 2020, and the 20th December, 2012 respectively.

2.26 The Deponent averred that he then requested for Bank Statements for the said Accounts in order to establish whether there was any suspicious transaction from the said Accounts.

2.27 He contended that a perusal of the Bank Statements revealed that the Indo Bank Kwacha Account No. 0141030002051 had a credit turnover of ZMW3, 806,949.54 for the period between January 2020 and August, 2021 and that the source of such credits were cash deposits as per exhibit **"FK24."**

2.28 He added that the Indo Bank Dollar Account No. 0141031000303 had a credit turnover of US$107,544.00 from the time the account was opened

on the 27th August, 2020, to August, 2021, as per exhibit **"FK25"**.

2.29 The Deponent averred further that he also discovered that the 1st Interested Party had obtained a loan amounting to ZMW320,000.00 under Loan Account No. 0146010002661 with Indo Bank which was disbursed on the 11th of October, 2017 and the outstanding amount of ZMW293,249.92 was liquidated all at once on 12th February, 2019 as per exhibit **"FK26."**

2.30 He added that he also observed that the 1st Interested Party would make several suspicious cash deposits into her Indo Bank Dollar Account and then the said amounts would be converted to Kwacha and transferred to the Indo Bank Kwacha Account at different rates. He vied that thereafter, he also noticed that the aggregate of the said money in the Indo Bank Kwacha Account would then be transferred to BOZ and used to purchase the said Government Bonds and Treasury Bills.

2.31 He deposed that his search at FNB also revealed that OCK Investments Limited, a Company in which the 1st Interested Party is both Shareholder and Director also had an Account No. 62891047534 with the said Bank which was opened on the 11th March 2021. He produced a copy of the said FNB Mandate File which shows the particulars of OCK Investments Limited as exhibit **"FK27."**

2.32 It was averred that similarly, it was established that a number of several suspicious cash deposits were made into this Account, the aggregate of which was transferred to the 1st Interested Party's personal account with Madison Finance Limited. The Deponent produced a copy of the Bank Statement for OCK Investment Limited from FNB as exhibit **"FK28."**

2.33 The Deponent avowed that from the above gathered information, he established that the total value of the properties owned by the 1st Interested Party was disproportionate to her official emoluments. The total value of the official emoluments was put at ZMW 2,133,797.02 while the total value of the Properties was at ZMW 13,575,110.00.

2.34 He contended that from the foregoing disproportions in official emolument and values of the properties owned by the 1st Interested Party, he had reasonable grounds for suspecting that the properties could be proceeds of crime or were realized directly or indirectly from unlawful activity.

2.35 In the Skeleton Arguments, the Applicant's Counsel submitted that based on the disproportions in official emoluments and values of the properties owned by the 1st Interested Party, there are reasonable grounds for suspecting that the properties could be proceeds of crime or were realized directly or indirectly from unlawful activity, hence the application for an Order

of Non-Conviction Based Forfeiture for tainted property.

2.36 To explain the purpose of the Application, the Applicant's Counsel referred to the South African case of **Nkobi Holdings Limited and Another v. The State**[1], wherein it was held, *inter alia,* that:

> ***"the primary purpose of confiscation or forfeiture proceedings is to ensure that no person benefits from their wrongdoing."***

2.37 It was averred that this Matter is properly before this Court for determination as the requirement is met by showing that there is probable cause for believing that the Interested Parties committed crimes during the material time notwithstanding that the actual crime has not been proved against them. Reliance was placed on the case of **National Crime Agency v. Mrs. A**[2] with respect to what the Court should take into consideration in determining whether to issue an unexplained assets order (an equivalent of a forfeiture order), where it was stated that there must be reasonable grounds for suspecting that the known sources of an individual's lawfully obtained income would have been insufficient to enable him to obtain the property at issue.

2.38 It was further submitted that this obligates an individual to explain the sources of wealth and to lead sufficient evidence to defeat any reasonable grounds for suspicion presented by the opposing side.

2.39 Counsel for the Applicant argued that in *casu,* the 1st Interested Party was called upon to render an explanation of how she acquired the properties in question and she opted to remain silent. The Applicant submitted that it has been proved on a balance of probabilities that the 1st Interested Party has unexplained properties.

2.40 It was averred that it is trite law that the Applicant has the evidentiary obligation to adduce evidence to show that the Interested Parties have property reasonably suspected of being proceeds of crime. It was submitted that the Applicant has tendered documentary evidence sufficient to discharge this obligation. It was contended that there is nothing to controvert what it has placed before the Court.

2.41 The Applicant prayed that all the properties subject of these Proceedings be forfeited to the State and for costs.

3.0 1st INTERESTED PARTY'S AFFIDAVIT IN OPPOSITION AND SKELETON ARGUMENTS

3.1 The 1st Interested Party, **Faith Margaret Chisela Musonda,** swore an Affidavit in Opposition on her behalf and on behalf of the 2nd and 4th Interested Parties (Sela Property Investments Limited and Life Television Limited, respectively).

3.2 She deposed that contrary to the Complaint received by Mr. Kombe alleging her ownership of Plot No. LUSAK/IN_24982/3 in Kingsland City, Lusaka, the

assertion of purchasing the property for US$ 180,000.00 is inaccurate. She stated that while it is true that she initiated a transaction for the acquisition of this property, the transaction was not finalized due to financial constraints and that the ownership of the property remains with the Seller as the sale was not completed.

3.3 She deposed that she failed to fulfil the requirements for completing the purchase and that it is evident from the Lands Printout marked as "**FK8b**" that no Assignment of the property has ever been made to her. It was her contention that such allegations are aimed at inflating the perceived value of her assets in an attempt to cast doubt on the legitimacy of her personal income.

3.4 The Deponent averred that her financial standing is commensurate with her lawful earnings, and any insinuations to the contrary are unfounded. She added that she had no knowledge of any properties hidden under the names of Chimuka and Miyanda Mulambo and that the exhibit marked **"FK1"** clearly demonstrated the Contract she signed, Miyanda Mulambo was a Witness to the signing.

3.5 She vied that no Certificate of Title has been presented as evidence to suggest that the properties mentioned in the Contract have been concealed under the names of Miyanda and Chimuka, and that the absence of documentation contradicts any assertions of

concealment, casting doubt on the validity of such claims. She also stated that upon critical examination of exhibit "**FK3a**", it is evident that the payments she endeavoured to make for the intended property purchase in Kingsland City were instalments.

3.6 She stated that her sources of income, derived from legitimate business operations dating back to 2014, are well-documented. She vied that she raised significant questions as to how these resources, accumulated over a considerable period, could suddenly be perceived as proceeds of crime by the Applicant, based on what appears to be a superficial investigation.

3.7 The Deponent added that the disparity between the thoroughness of her financial history and the cursory nature of the inquiry conducted by the Applicant was perplexing and only employed to justify the purported reasonable suspicion.

3.8 She stated that the omission of several legitimate sources of income in the Applicant's Affidavit is employed to justify their purported reasonable suspicion. She added that these include rental proceeds from a property she owns in Salama Park and various incomes derived from her professional engagements.

3.9 The Deponent avowed that her professional trajectory is highlighted by recruitment from international firms for pivotal leadership roles in esteemed institutions

known for employing top-tier professionals within her field. Notable appointments include positions at prestigious entities such as the South African Broadcasting Corporation (SABC) and the renowned Tsogo Sun Group of Hotels (Southern Sun) in Pretoria.

3.10 She added that subsequently, she assumed senior management roles in prominent local institutions, notably serving as Head of Channel for ZNBC TV 2 and holding a position within the Director General's Office at the Zambia Development Agency (ZDA) where she received gratuities and other payments in form of allowances.

3.11 The Deponent deposed that as a Communications Expert with 24 years of experience, she has successfully operated her Commercial Television Production Companies from inception. She vied that one of her earliest clients was Zambia's largest Mobile Network Operators, with whom she secured contracts and received payments for the various activities conducted.

3.12 She added that throughout her career, she had offered high-value consultancy services to both local and international firms, contracts specializing in Project Management and Event Management for corporate clients over a span of 15 years.

3.13 Additionally, she vied that she had engaged in various personal business ventures, including serving as a Corporate Master of Ceremonies and involvement in

Agribusiness, among others. The earnings generated from these endeavours have been diligently invested, primarily towards acquiring properties and in no way can they be perceived as proceeds of crime.

3.14 Furthermore, she stated that during her tenures at ZNBC, ZDA, and ETG, she frequently engaged in both local and international travel for official assignments, receiving allowances in accordance with company policies. She vied that unfortunately these allowances have not been accounted for in the Applicant's Affidavit in Support.

3.15 She deposed that it is crucial to recognize that these overlooked sources of income, properly managed, have enabled her to make investments in properties that the Applicant deems purportedly to be reasonably suspected to be proceeds of crime. She vied that as correctly acknowledged in the supporting Affidavit, Subdivision No. F/1504 in Chisamba belongs to the 2nd Interested Party. Moreover, as demonstrated by exhibit "**FK7**" on page 34 of the Affidavit in Support, the property in question was acquired through a Mortgage arrangement.

3.16 She vied that the Applicant emphasizes current market value of F/378a/11, Ibex Hill, Lusaka as determined by the Valuation Report, rather than the amount she originally paid at the time of acquiring the property as correctly reflected in Paragraph 12 of the Affidavit in Support.

3.17 It was her contention that the Applicant's approach overlooks the fact that the value of the property at the time of acquisition may differ significantly from its current market valuation, potentially leading to a misrepresentation of the situation.

3.18 She vied that relying heavily on the valuation of the entire property currently seems to be a deliberate attempt to inflate the figures to create an impression that the funds involved are disproportionately large and possibly proceeds of crime, which is not the case.

3.19 The Deponent added that she had further been advised by her Advocates on Record that the Valuation Report provided is an estimation made for the purpose of determining a potential resale value and does not accurately reflect the actual amount paid for the property in question.

3.20 She averred that she acquired Government Bonds and Treasury Bills through an Account with the Bank of Zambia (BOZ), utilizing funds obtained from the sale of one of her properties. She added that it is important to note that the amount reflected in the Affidavit in Support represents the accrued value of these investments and the organic growth, rather than the initial amount she paid for the Government Bonds and the Treasury Bills.

3.21 The Deponent stated that the accrued amounts reflect the legitimate investments as standard practice and do not indicate any unlawful activity. She stated that

it is crucial to consider the lawful origin and purpose of these funds to avoid any unwarranted assumptions or allegations.

3.22 She deposed further that the acquisition of a Fixed Term Deposit Facility from Madison Finance Limited was facilitated by revenues generated from multiple advertising contracts executed by Life TV. These contracts served as legitimate sources of income, which were then utilized for the investment in the Fixed Term Deposit, and that the Facility represents the accrued values, not the initial amount paid.

3.23 That the jewellery mentioned in Paragraph 23 of the Affidavit in Support was not acquired through her own financial transactions using her personal funds but was received as gifts. That it is important to accurately represent the source of these assets to prevent any misunderstandings regarding their origin and ownership.

3.24 In her further deposition, the 1st Interested Party stated that as correctly acknowledged in Paragraph 30, of the Applicants Affidavits in Support the equipment referred to in Paragraph 26 thereof was not acquired through illicit means, but rather through legitimate channels using traceable resources.

3.25 She added that it is important to highlight that since early 2017, she has been actively involved in running businesses, generating income from various legitimate sources. But that however, these sources of income

had been omitted in Paragraphs 30 and 31 of the Affidavit in Support, creating a misleading impression that the equipment was unlawfully acquired.

3.26 That the transactions referenced in the Applicant's Affidavit in Support, from Paragraphs 36-45 labelled as suspicious are legitimate financial activities carried out by a Holding company on behalf of its subsidiary companies.

3.27 It was averred that the transactions encompass both receipts and disbursements that are fundamental to the operational and financial management of the subsidiaries.

3.28 The Deponent vied that she is aware that as part of standard business operations, Holding Companies often undertake financial transactions to support the functioning and growth of their subsidiary entities and that therefore, it is essential to recognize the legitimate nature of these activities and not misinterpret them as indicative of any illicit behaviour.

3.29 The Deponent vied that the assertion in the Applicant's Affidavit alleging the disproportionate values between official emoluments and the properties she owns, gives rise to reasonable suspicion of proceeds of crime, remains untrue.

3.30 She added that she has demonstrated in her Affidavit the legitimate acquisition of these assets and that it is misleading to claim ownership of all properties solely

by her, as some assets are rightfully owned by the company.

3.31 She vied that her legal representatives advised that the Application is fundamentally misconceived, as it omits crucial information about her diverse sources of income and that the Applicant's attempt to portray her personal income as illegitimate and illicitly acquired is unfounded and lacks merit. She averred that by selectively omitting pertinent information regarding her various sources of income, the Applicant seeks to create a false narrative that does not accurately reflect the lawful nature of her financial activities.

3.32 She averred that the inclusion of comprehensive details about her legitimate earnings would undermine the Applicant's case significantly, compelling them to resort to misleading tactics to support their claims.

3.33 The Deponent avowed that she had been advised by her Advocates on Record that in light of the comprehensive evidence presented in this Affidavit, it is clear that the Applicant's assertion regarding the origins of the properties in question are baseless and without merit. She vied that the attempt to attribute suspicion of proceeds of crime to assets that have been lawfully acquired and are properly accounted for is unjustified.

3.34 In the List of Authorities and Skeleton Arguments filed, the 1st Interested Party's Counsel referred the

Court to the case of **Johanes Kenneth Siogopi (TA Nam Transport Co. a Partnership) v Director of Public Prosecutions**[3] and stated that the 1st Interested Party has effectively demonstrated to the satisfaction of this Court that the properties in question were legitimately acquired.

3.35 It was averred that through comprehensive evidence provided in the Affidavit, the 1st Interested Party has established her genuine interest in the properties and has shown that these assets were obtained through lawful means and as such, there is no basis to suggest that any offense was committed in relation to the acquisition of these properties.

3.36 It was submitted that the 1st Interested Party's ability to substantiate her ownership or interest in the assets, coupled with the absence of evidence indicating any unlawful activity, renders the issue of commission of an offense moot in this case.

3.37 It was argued that the Court should focus on acknowledging the legitimacy of the 1st Interested Party's acquisition of the properties and dismiss any unfounded allegations to the contrary.

3.38 Counsel submitted that Directorship and Shareholding in the 3rd Interested Party, a Company, does not necessarily translate to ownership of specific assets owned by that Company. Therefore, those properties not amenable to forfeiture include those owned by the Company.

3.39 It was averred that the premises themselves may not be subject to forfeiture under the **FPOCA**, but proceeds derived from criminal activities conducted on those premises could be. In addition, it was stated that in accordance with the cannons of interpretation of statutes, the provisions of the **FPOCA** should be examined in the context of the entire Statute. Counsel stated that this holistic approach to statutory interpretation ensures that the legislative intent and purpose of the Act are considered comprehensively.

3.40 It was also averred that to argue that the Government Bonds and Treasury Bills held by the 1st Interested Party are amenable to forfeiture, is not tenable as the Applicant's Affidavit does not demonstrate any evidence to indicate any illegal or criminal activity associated with the acquisition of the Government Bonds and Treasury Bills.

3.41 Counsel submitted that the Applicant's Affidavit, merely states that these investments were discovered in an Account held by the 1st Interested Party at the Bank of Zambia without evidence of unlawful acquisition or involvement in criminal activities related to these investments and thus, it would be difficult to justify their forfeiture under the **Forfeiture of Proceeds of Crimes Act**.

3.42 Counsel stated that the fact that the Government Bonds and Treasury Bills were held in an Account at the Bank of Zambia suggests that they were acquired

through legitimate means and in compliance with Banking Regulations and without evidence to the contrary, it cannot be assumed that the funds used to purchase these investments were obtained illegally and do represent proceeds of crime.

3.43 It was averred that Government Bonds and Treasury Bills representing property rights and financial assets are protected under the law.

3.44 Additionally, that any attempt to forfeit these assets without legal justification would infringe upon the 1st Interested Party's property rights and due process. Counsel vied that based on the information provided in the Affidavit and the legal principles governing forfeiture, was being submitted that the Government Bonds and Treasury Bills held by the 1st Interested Party are not amenable to forfeiture under the **FPOCA**.

3.45 It was averred that in **National Director of Public Prosecutions v Kwetana**[4]), the Court emphasised the necessity of establishing a closer connection between the property and the offence, beyond mere presence, to demonstrate that the property was 'concerned' in the commission of the offence. In addition, that the purpose of civil forfeiture is primarily aimed at removing the incentive for crime, rather than punishing the offender.

3.46 Counsel stated that in evaluating the appropriateness of forfeiture, it is imperative to consider factors such as the association between the property and the

crime, the potential deterrent effect of forfeiture on future wrongdoing, the nature and use of the property, and its impact on the owner. It was contended that these additional considerations underscore the need for a balanced and nuanced approach to forfeiture, taking into account the broader objectives of preventing and combating crime.

3.47 It was argued that in light of the 1st Interested Party's presentation, this constitutes a fit and proper case for this Court to conclude that the properties in question were legitimately acquired.

4.0 THE 3RD AND 4TH AFFIDAVIT IN OPPOSITION AND SKELETON ARGUMENTS

4.1 The 3rd and 4th Interested Parties filed an Affidavit in Opposition sworn by **James Chaponda**, the Managing Director of Covenant Broadcasting Company Ltd and Covenant Hills Ltd (T/Z) Life TV, cited as the 3rd and 4th Interested Party in this matter.

4.2 He deposed that in responding to the Applicant's Affidavit in support, he is aware and advised by the 1st Interested Party that she purchased a Subdivision of the property known as Subdivision No. F/378a/11, Ibex Hill measuring approximately (50 by 40m) and that this can also be noted from the Applicant's exhibit marked **"FK8a"** in the Affidavit in Support.

4.3 The Deponent averred that he is also aware and has been advised by the 1st Interested Party that she has several legitimate sources of income attributed to her

and that she purchased the 50 by 40m of the land in question using rental earnings from a property she owns in Salama Park, and that the Applicant is well aware of this property as they have even placed a Restriction Notice on the said property.

4.4 He avowed that he was aware and had also been advised by Lynette Musonda, a Shareholder and Director of the 4th Interested Party that despite the 1st Interested Party purchasing the Subdivision of the property known as Subdivision No. F/378a/11, Ibex Hill, the property was developed by the 3rd and 4th Interested Parties.

4.5 He further averred that he had been advised by the Advocates representing the 1st to the 4th Interested Parties and verily believes the same to be true that the 3rd and 4th Interested Parties herein have equitable rights in the property in question having developed the property with money acquired from proceeds of the business.

4.6 He vied that he had further been advised by the Advocates representing the 1st to the 4th Interested Parties and verily believes the same to be true that the 1st Interested Party also has an equitable right the subdivision of the property known as Subdivision No. F/378A/11, Ibex Hill measuring approximately 50 by 40m as she does not hold title to the said property.

4.7 In their Skeleton Arguments, the 3rd and 4th Interested Parties essentially rehashed the averments in their

Affidavit in Opposition and added that the 1st, 3rd and 4th Interested Parties are not the legal owners of Subdivision No. F/378a/11, Ibex Hill as they do not possess a Certificate of Title to the said property and as such they only have an equitable interest.

4.8 Counsel submitted that the Record will show that the 3rd and 4th Interested Parties have not been charged with any offence and as such the property should not be liable to forfeiture. Reference was made to the case of **National Director of Public Prosecutions v Kwetana** [4] for the position that civil forfeiture is primarily aimed at removing the incentive for crime rather than punishing the offender.

4.9 In conclusion, it was stated that this Matter constitutes a fit and proper case for this Court to conclude that the property in question was legitimately acquired and the developments on the said property were done by the 3rd and 4th Interested Parties.

5.0 5th INTERESTED PARTY'S AFFIDAVIT IN OPPOSITION AND SKELETON ARGUMENTS

5.1 The 5th Interested Party, **Samuel Lisibani Mulozi**, filed an Affidavit in Opposition in which he deposed that he is an Interested Party in this Matter, specifically relating to property known as F/378a/11 Ibex Hill.

5.2 The gist of his opposition is that the 1st Interested Party purchased from him, Subdivision F of

F/378a/11 and not F/378a/11 Ibex Hill, as has been stated by the Applicant as per the Contract of Sale marked **"SLM7"**. He deposed that the property known as F/378a/11 is the entire extent of the land and not a Subdivision belonging to the 1st Interested Party.

5.3 He added that he is the legal owner of F/378a/11 Ibex Hill which he acquired on the 26th July, 1977, as per the Certificate of Title exhibited and marked **"SLM2"** which information the Applicant was fully aware of but has continued to ignore that fact despite being fully aware of the consequences of their Application.

5.4 The Deponent stated that the 1st Interested Party's Subdivision was already marked off and has an independent Survey Diagram exhibited as **"SLM3"** which describes the actual Subdivision that was acquired and that the same is known as Subdivision F of Subdivision 11 of Farm 378a Ibex Hill, and should reflect as F/378a/11/F and not F/378a/11.

5.5 The Deponent stated that he applied for other subdivisions to be created on his land and the same was denied by the Commissioner of Lands for the reason that there was a Restriction Notice placed on the land by the Applicant on 27 November, 2023. He stated that because of that, he has not been able to deal with the land in a manner as he wishes and that this has caused him great inconvenience.

5.6 He averred that the Applicant's actions and error ought to be corrected to avoid him facing any further inconvenience when dealing with his land.

5.7 The Deponent vied that he risks losing his entire portion of land being forfeited to the State if the said process is left as it is incorrectly listed as F/378a/11 and that it belongs to the 1st Interested Party.

5.8 He deposed that the Valuation was done on Subdivision F of Farm 378a/11 which the Applicant is mistakenly calling F/378a/11.

5.9 In his Skeleton Arguments, the 5th Interested Party rehashed the contents of his Affidavit in Opposition including the history of his acquisition of property known as F/378a/11 and how the Applicant has wrongly listed it in these proceedings instead of listing only the Subdivision, which was acquired by the 1st Interested Party. Reference was made to the case of **Anti-Corruption Commission v. Barnett Development Corporation Limited**[5] for the position that a Certificate of Title is conclusive proof of ownership which can only be challenged on allegations of fraud or impropriety in its acquisition.

5.10 It was stated that the 5th Interested Party, having shown ownership of the property in question by way of production of the Certificate of Title to the property and having satisfied the legal requirement for his claim, the Property referred to as F/378A/11 is wrongly a subject of this litigation as the Applicant

ought to refer to the subdivision that was acquired by the 1st Interested Party from Mr. Samuel Mulozi which is known as F/378a/11/F.

6.0 **APPLICANT'S AFFIDAVIT IN REPLY AND SKELETON ARGUMENTS TO THE 1ST, 2ND AND 4TH INTERESTED PARTIES' AFFIDAVIT IN OPPOSITION**

6.1 In Reply, the Applicant through an Affidavit sworn by **Ferguson Kombe** averred that his Affidavit in Support has demonstrated what the investigations revealed and that the 1st Interested Party signed a Contract of Sale on behalf of the 2nd Interested Party and also made payments towards the purchase of a Farm in Chisamba being Subdivision of Farm No. F/1504.

6.2 He added that he had been advised by Counsel and verily believes the veracity of the same that the 1st Interested Party in her Affidavit in Opposition has merely made assertions and has not provided any proof to support those assertions.

6.3 The Applicant, in the Skeleton Arguments in Reply, averred that the evidentiary burden in relation to unexplained assets is based on the principle of 'prove it or lose it'. In support of this assertion, Counsel referred to the case of Kenyan Court of Appeal of **Ethics and Anti-Corruption Commission v Patrick Ochieno Abachi and 6 Others**[6], wherein the Court stated that an individual has the evidentiary burden to offer a satisfactory explanation for legitimate acquisition of the asset or forfeit such asset.

6.4 He vied that the 1st, 2nd and 4th Interested Parties' Affidavit in Opposition to the Affidavit in Support of the Originating Notice of Motion merely advanced assertions and have not provided any proof to support the said assertions and had therefore failed to discharge their evidentiary burden.

7.0 **THE APPLICANT'S AFFIDAVIT IN REPLY AND SKELETON ARGUMENTS TO THE 5TH INTERESTED PARTY'S AFFIDAVIT IN OPPOSITION**

7.1 The gist of the Affidavit in Reply sworn by **Ferguson Kombe** was that the 5th Interested Party through his Advocates, Messrs Legal Aid Clinic for Women, wrote to the Applicant claiming an interest in Farm No. 378a/11 Ibex Hill, Lusaka , attaching a Contract of Sale between the 5th Interested Party and the 1st Interested Party dated 2020 but that Description of Property in the said Contract of Sale indicated that the property being sold is proposed Subdivision of "Sub 11 of Farm 378a, Ibex Hill situated in Lusaka Province", which is indicated in the Originating Notice of Motion and not F/378a/11/F as alleged by the 5th Interested Party.

7.2 He contended that the Contract of Sale exhibited as "**SLM7"** does not have the 5th Interested Party or the 1st Interested Party as Parties to that Contract of Sale which in essence refers to Stand 5768, Livingstone, Southern Province and refers to Llyod Muposhi and Ireen Simbuwa as the Parties.

7.3 In the Skeleton Arguments, the Applicant submitted that the 5th Interested Party has not appeared before this Court neither has he adduced any evidence to demonstrate his interest in this Matter.

8.0 CONSIDERATION AND DECISION OF THE COURT

8.1 We have considered the Application, the Parties' respective Affidavits and Skeleton Arguments. As alluded to in the "Introduction and Background," we will deal with the 3rd and 4th Interested Parties' last Preliminary Issue at this point. We intend to proceed with the Matters herein as follows:

A. *The Preliminary Issue;*

B. *The extent of interest of the Interested Parties in Subdivision 11 of Farm 378a Ibex Hill and Plot No. LUSAK/LN 24982/3 (C5,1#, D4B), Kingsland City; and*

C. *The Forfeiture Order Application.*

A) PRELIMINARY ISSUE

8.2 The main issue raised in the Preliminary Issue was that the 3rd and 4th Interested Parties were not notified of the Proceedings as required by **Section 30** of the **FPOCA**. The said **Section** states as follows:

> ***"Where a public prosecutor applies under section twenty-nine for the forfeiture order-***
> ***(a) the public prosecutor shall give not less than thirty days written notice of the application to any person who is known to have an interest in the tainted property in***

respect of which the application is being made;

(b) any person who claims an interest in the property in respect of which the application is made may appear and produce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the public prosecutor to-

(i) give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property; and

(ii) publish in the Gazette or a daily newspaper of general circulation in Zambia, a notice of the application."

8.3 Our understanding of this provision is that it is meant to ensure that a person who may have an interest in the property subject of an Application for an Order of Forfeiture is given sufficient time and an opportunity to appear before Court to defend their interest in the Proceedings.

8.4 This can also be seen from the fact that where the Public Prosecutor has not given the Notice of the Application, but the Court notes that there appears to be a person who appears to have an interest in the property subject of the Proceedings, the Court can order the Public Prosecutor to give that person Notice

and publish in the Government Gazette. This is meant to ensure that no interested person is prejudiced.

8.5 In *casu*, the 3rd and 4th Interested Parties filed an Affidavit in Opposition and Skeleton Arguments on 21st May, 2024, in response to the Applicant's Amended Affidavit in Opposition and have essentially defended their claim against the Application before Court. They then raised this issue on 13th September, 2024.

8.6 The question is, what prejudice have they suffered in the circumstances herein? Even if there may have been a breach of a procedural statutory provision by the Applicant, what would be the effect of the Court directing the Applicant to serve the 3rd and 4th Interested Parties the Application and publishing the same in the Government Gazette? What are the 3rd and 4th Interested Parties going to place before Court that they have not already done? The answer to all these questions, in our view, is none.

8.7 It is further our considered opinion that the circumstances herein are distinguishable from those in the Court of Appeal case of **Sydney Mwansa v the Director of Public Prosecutions**[7] where the Interested Party was called as a Witness but she did not defend her claim to the subject property. The 3rd and 4th Interested Parties herein have already done so.

8.8 Further, these being civil proceedings governed by civil procedure rules, Parties are required to raise

issues of alleged irregularity in the process early enough and before taking steps after becoming aware of the irregularity. This is provided for in **Order 2 Rule 2 of the Rules of the Supreme Court**. This position was succinctly restated in the case of **Oscar Chinyanta and 31 Others V. Alasia Building Construction Ltd and Another**[8] that:

> ***"And under Order 2 rule 2 the court may, on the ground that there has been such failure and, on such terms, as to costs or as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order. However, the application must be made within reasonable time and before the Party applying has taken any fresh step after becoming aware of the irregularity...We can safely say that the appellants had waived their right to object when they took fresh steps in the action after becoming aware of the irregularities..."***

8.9 In our view, by making the Application raising a further Preliminary Issue after raising a previous Preliminary Issue on their legal capacities and after then responding to the alleged defective amended Process, and after further abandoning another Preliminary Issue, the 3rd and 4th Interested Parties

are merely engaging in dilatory practices. This is because aside from waiving their right to object to the irregularity and not suffering any prejudice, any Order that this Court would make would be academic and the Court frowns upon granting such Orders as alluded to in the case of **The Attorney General V The Law Association Of Zambia**[9]. Accordingly, the Preliminary Issue raised is without merit and fails.

B) EXTENT OF INTEREST IN THE IBEX HILL AND KINGSLAND PROPERTIES BY THE INTERESTED PARTIES.

8.10 In *casu*, we have noted and need to determine two issues in relation to Property Subdivision 11 of Farm 378a Ibex Hill, in which the 5th Interested Party is claiming an interest, and Kingsland City Plot No. LUSAK/LN 24982 /3 (C5, 1#, D4B) in which the 1st Interested Party has alleged that she has not finished paying the purchase price due to financial constraints.

8.11 With respect to the 5th Interested Party, Samuel Mulozi, it was stated that he had only sold Subdivision F of Subdivision 11 of Farm 378a Ibex Hill to the 1st Interested Party and not the entire Property. In response, the Applicant's Deponent averred that he had noticed that the Particulars of the Property indicates that the property being sold is a proposed Subdivision of Subdivision 11 of Farm 378a Ibex Hill.

8.12 We, therefore, at this point need to determine whether it is the entire property that is subject of these Proceedings or only a portion of it. In this vein, we have perused the Certificate of Title relating to the Remaining Extent of Subdivision No. 11 of Farm No. 378a, which shows that the extent of the land is 3.3545 hectares. We have observed that the 5th Interested Party attached a Contract of Sale to his Affidavit in Opposition which does not relate to the Contract of Sale between himself and the 1st Interested Party but it is between a Llyod Muposhi and Ireen Simbuwa relating to Stand No. 5786 in Livingstone in Southern Province.

8.13 However, the acknowledgment of "Receipt" exhibited by the Applicants, as **"FK8a-b"** shows that it was payment for land by the 1st Interested Party to the 5th Interested Party and we note that extent of the land subject of the Contract is 0.60, being a proposed Subdivision of Sub 11 of Farm 378a Ibex Hill. The extent of the land has also been referred to by the 3rd and 4th Interested Parties in the Affidavit in Opposition.

8.14 Based on the "Receipt" acknowledging payment for the property produced by the Applicant marked **"FK8a"** and considering the extent of the land on the Certificate of Title produced by the 5th Interested Party marked as **"SLM2"**, we find that what was purchased by the 1st Interested Party was Subdivision F of

Subdivision 11 of Farm 3789, Ibex Hill, Lusaka and not the entire property that has been restricted by the Applicant. Thus, this is the portion of the land that ought to be one of the Properties subject of these Proceedings, not the entire property.

8.15 We have also noted that the 1st Interested Party has stated in her Affidavit in Opposition that she has not fully paid for property LUSAK/LN-24982/3 Kingsland City, Lusaka and that therefore, it does not belong to her and further as it has not been transferred to her.

8.16 A perusal of the Applicant's Affidavit in Supportshows that the 1st Interested Party paid the sum of US$144,500.00, out of the Contract purchase price of US$185,000.00. We also note that Kingsland City, the other Party to the subject Contract was not notified of these Proceedings. Consequently, it is our considered view that in determining what value of property the 1st Interested Party has in that Property in these Proceedings, the Court's jurisdiction will be limited to the sum of US$144,500.00, which is what was paid towards the purchase of the said Property and duly admitted by the 1st Interested Party.

D. THE FORFEITURE ORDER APPLICATION

8.17 With respect to the substantive matter, we note that this Application for Non-Conviction Based Forfeiture Order has been commenced pursuant to **Sections 29, 31** and **71** of the **Forfeiture of Proceeds of Crimes Act (FPOCA).** By its very words, a Non-Conviction

Based Forfeiture Order means that no person has been convicted of an offence and it is targeted at the property suspected to be proceeds of crime.

8.18 This was aptly stated in an explanation of the nature of Non-Conviction Based forfeiture also called Civil Forfeiture, in the case of **Teckla Lameck and Another v President of Republic of Namibia and Others**[10] where it was held as follows:

> ***"Asset forfeiture is, as is stated in s50 of POCA, a civil remedy directed at confiscation of the proceeds of crime and not at punishing an accused. Chapter 6 proceedings are furthermore not necessarily related to a prosecution of an accused. Those proceedings are open to the State to invoke whether or not there is a criminal prosecution... even if there is a prosecution, the remedy is not affected by the outcome of the criminal proceedings. The remedy is thus directed at the proceeds and instrumentalities of crime and not at the person having possession of them."***

8.19 In the South African case of **National Director of Public Prosecutions and Another v Mohamed NO and Others**[11] it was held that:

> ***"It is common cause that conventional criminal penalties are inadequate as measures of deterrence when organised***

crime leaders are able to retain the considerable gains derived from organised crime, even on those occasions when they are brought to justice... it is now widely accepted in the international community that criminals should be stripped of the proceeds of their crimes, the purpose being to remove the incentive for crime, not to punish them."

8.20 Back in our jurisdiction and arising from the international Conventions and in particular the United Nations Convention Against Corruption (UNCAC) which was ratified on 7th December, 2007, the **Forfeiture of Proceeds of Crime Act (FPOCA)** was among legislation that was enacted to deal with forfeiture of suspected proceeds of crime. The Supreme Court had occasion to comment on the **FPOCA** in the case of **The People v Austin Chisangu Liato**[12] wherein they stated as follows:

"In our considered view, the Forfeiture of Proceeds of Crime Act No. 19 of 2010, does domesticate, though not entirely, some tenants of these conventions by making provision on forfeiture of suspected proceeds of illicit activity and lowering the standard of proof. The passage of the Forfeiture of Proceeds of Crime Act in 2010 was therefore, a deliberate act of the State, sequel to

international clamour in this regard, to restate the burden and the standard of proof in proceedings relating to forfeiture of proceeds of crime."

8.21 We note that Counsel for the 1st Interested Party has submitted that there has to be a close connection between the concerned property and the commission of the offence.

8.22 In response to this assertion, it is our view that this is not always possible hence the promulgation of Non-Conviction Based Forfeiture laws. It is a fact that perpetrators of illicit activities will not leave a trail of "bread crumbs" showing their activities and the proceeds derived from those activities.

8.23 This assertion was aptly put by Justice Anthony Smellie, QC, Chief Justice of the Cayman Islands writing in the *Journal of Money Laundering* cited in **The People v Austin Liato**[12] case as follows:

"...the worldwide adoption of laws which enable the confiscation of the proceeds of crime reflects the acknowledged importance of depriving the criminal of his profits. These laws recognize that organized criminals use their proceeds of crime to insulate themselves by the use of intermediaries, from detection and arrest. They acknowledge that the more profitable the crime, the more difficult it becomes for

law enforcement the link the criminal to it."

(underline by Court.)

8.24 This is also evidenced by the provisions of **Section 72(3)** of the **FPOCA** which provides that the offence of possession, receiving, concealing or disposal of property or money or other property reasonably suspected to be proceeds of crime is not predicated on proof of the commission of a serious offence.

8.25 As earlier alluded to, this Application has been launched pursuant to **Sections 29, 31** and **71** of the **FPOCA**, which provide for the mode of commencement by the Public Prosecutor; who can make the application; and the standard of proof as well as what is required of an interested party to prove his/her interest in the subject property.

8.26 The Applicant herein has alleged that the 1st Interested Party's official emoluments values were disproportionate with the value of the Properties owned and that this raised reasonable grounds for suspecting that the properties could be proceeds of crime.

8.27 According to **Section 2** of the **FPOCA** "proceeds of crime" in relation to a serious offence or a foreign serious offence, means property or benefit that is:

"(a) wholly or partly derived or realised directly or indirectly, by any person from the commission of a serious offence or a foreign serious offence;

(b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence;

(c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence;

and includes, on a proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted."*(Underline by Court).*

8.28 Thus **Section 2(c)** of the Act dispels the 1st Interested Party's Counsel's assertion that Government Bonds and Treasury Bills are not amenable to the provisions of the **FPOCA**. Quite clearly, the source of the moneys used to invest in these investments is cardinal if the source is directly or indirectly associated with the commission of an offence. The fact that the money was received by Bank of Zambia from another Bank does not, of itself, legitimise the source of the money.

8.29 It is not in dispute that in order to prove that a person is in possession of property reasonably suspected to be a proceed of a crime, the Applicant must prove a two-tier process. Firstly, the Applicant must show that the person was in possession of the property and secondly that the said property may reasonably be suspected to be a proceed of crime.

8.30 It is also not in contention that the Interested Parties herein are in possession of or have claimed an interest

in the properties subject of these Proceedings. What is in dispute is whether or not the stated properties may be property reasonably suspected to be proceeds of a crime.

8.31 As regards burden proof, **Section 34** of the **FPOCA**, provides that the Applicant bears the onus of proving the matters necessary to establish the grounds for making the order being sought in any proceedings under the **FPOCA**. This, therefore, entails that the Applicant has to show the basis for reasonably suspecting that the property is proceeds of crime.

8.32 In this regard, the Supreme Court, in the already cited case of **The People V Liato**[12], dealt with the aspect of reasonable suspicion and explained it in the following words:

> ***"We are, for our part, perfectly satisfied that reasonable suspicion as used in section 71 (1) of the Forfeiture of Proceeds of Crime Act, is mere conjecture or surmise, shy of actual proof that a state of affairs exists. Such suspicion must be based on articulable facts..... What however, calls for proof under section 71 (1) of the Act is 'reasonable suspicion'. This necessarily entails that the suspicion ought to be based on some factual basis which removes the subjectivity implicit in ordinary 'suspicion."***

8.33 The Applicant's Deponent has stated that they received an anonymous Complaint on 5th November, 2021, that the 1st Interested Party was in possession of property as listed in the caption of these Proceedings, suspected of being proceeds of crime.

8.34 It was averred that the investigations revealed that the 1st Interested Party had official emoluments worth ZMW 2,133,797.02, while the value of the properties that she has and subject of these Proceedings is worth US$244,844.53, and ZMW 13,575,110.00. It was stated that the 1st Interested Party was called to render an explanation of how she acquired the properties in question and she opted to remain silent.

8.35 The 1st Interested Party in an Affidavit in Opposition filed on her own behalf and on behalf of the 2nd and 4th Interested Parties denied the allegations and stated that the money to purchase the properties was legitimately earned from various contracts as well as her official employment.

8.36 James Chaponda, on behalf of the 3rd and 4th Interested Parties stated that he had been informed by Lynette Musonda, a Shareholder and Director in the 4th Interested Party, that the 1st Interested Party had bought the Property known as Subdivision F No. F/378a/11, Ibex Hill, from legitimate sources and that the property was developed by the 3rd and 4th Interested Parties who have an equitable interest in the Property.

8.37 Based on the foregoing, can the Court reach a conclusion that the Applicant had reasonable basis for holding a view that the Interested Parties were in possession of property suspected to be proceeds of crime?

8.38 We have perused the exhibits as produced by the Applicant on which their suspicion is based. We note the following:

i. *The Contract for Plot No. LUSAK/LN_24982/3(C5,1#,D4B) Kingsland was executed on 9th October, 2020 ("**FK2**");*

ii. *The Contract between Mike Sifuya, Mutandazo Handa, George Handa, Nosipo Handa and Others and Sela Properties Investment Limited relating to proposed Subdivision of Farm No. 1504, Central Province of Zambia is dated February, 2021 ("**FK5**");*

iii. *The Receipt of Payment for Subdivision No. F/378a/11, Ibex Hill, Lusaka between the 1st Interested Party with Mr Sam Mulozi is dated 12th February, 2019 ("**FK8**") and payment was made on the same day. The acknowledgement of "Receipt" has the following sentence "Ps. Please note that I would like the Contract of Sale to be in my brother's name, Jonathan Bupe Imakando.", after which the 1st Interested*

Party and her Witness append their names and signatures;

iv. *The Government Bond Investment for ZMW3,1400,000.00, was issued on 25th January, 2021 while the Treasury Bill worth ZMW1,100,000.00, was issued on 7th June, 2021 ("**FK14**"); and*

v. *Farm Equipment which was purchased from Saro Agro Equipment Limited, was ordered on 12th January, 2021 and paid for in cash on 30th August, 2021("**FK18C**").*

8.39 We have perused the 1st Interested Party's Bank Statements from her FNB Account and her Indo Zambia Bank Accounts. We note that the Indo-Zambia Bank Account, exhibit **"FK24"** appears to have been where the 1st Interested Party's salary used to be credited from the Zambia Development Agency. We also observed, *inter alia*, the following:

i. Cash deposits of ZMW10,000.00, and ZMW11,000.00, respectively on 25th July, 2019;

ii. Cash deposit ZMW13,000.00, on 18th November, 2019 and ZMW20,000.00 DDAC on 21st November, 2019;

iii. Cash deposit of ZMW10,000.00 on 6th May, 2020 and two DDAC credits of the same amount on the same day;

iv. A DDAC credit of ZMW96,000.00, to the Account on 11th May, 2020;

v. Terminal benefits from ZDA of ZMW163,245.60, on 10th July, 2020;

vi. Funds transfer worth ZMW223, 391.21 to the Account on 9th October, 2020, and Liquidation of the Loan worth ZMW219, 601.67 on the same day;

vii. Cash deposits of ZMW60,000.00, on 10th February, 2021, ZMW40,000.00, on 11th February, 2021; ZMW95,000.00, on 15th February, 2021; ZMW95,000.00, on 18th February, 2021; ZMW97,000.00, on 19th February, 2021; Funds transfer of ZMW227, 220.00, on 22nd February, 2021 to the Account; and a transfer to 10 Year Government Bond Investment worth ZMW614,785.92 on the same day;

viii. Cash deposit of ZMW55,000.00, on 23rd April, 2021, funds transfer of ZMW669,000.00 to the Account on 3rd May, 2021; and transfer of ZMW723,657.70. to 10 Year Government Bond Investment on the same date;

ix. Cash deposit of ZMW70,000.00 on 3rd June, 2021 and Funds transfer worth ZMW833, 240.00, on the same date.

x. Interest on Government Bond worth ZMW170,034.0, to the Account on 26th July, 2021; cash deposits of ZMW95,000.00, on 10th August, 2021, and ZMW99,000.00 on 11th August, 2021; after which there are no deposits save for Interest worth ZMW1,483.48 on 31st December, 2021.

8.40 With respect to the 1st Interested Party's United States Dollar Account, at Indo-Zambia Bank marked as **"FK25"** we observe, *inter alia,* the following:

i. US$9,800.00, Initial Deposit on Opening Account on 27th August, 2020; cash deposit US$20,000.00, on 26th September, 2020, US$20,000.00 cash deposit on 27th January, 2021; US$3,000.00, on 28th January, 2021; US$4,500.00 cash deposits on both 13th and 14th April, 2021; and US$4,900.00, cash deposit on 22nd April, 2021, while US$30,000.00 was debited on 3rd May, 2021.

ii. Cash deposits of US$17,000.00, on 5th May, 2021, and US$20,000.00, on 14th May, 2021 while US$37,000.00, was debited on 3rd June, 2021.

8.41 We also observe a number of deposits including what appears to be a salary from ETG and withdrawals in the 1st Interested Party's First National Bank Account,

but of note were the cash deposits of ZMW95,000.00 on 10th August,2021, ZMW99,000.00, on 11th August, 2021 and the transfer to Madison Finance Limited Fixed Deposit Account of ZMW240,000.00 on 20th August, 2021.

8.42 A further perusal of the OCK Investments Limited FNB Account, a Company in which the 1st Interested Party holds 9,000 of the 15,000 shares, has notable cash deposits of ZMW95,000.00 and ZMW99,000.00 deposited on 10th and 11th August, 2021 respectively. There is also a deposit of ZMW30,000.00 from Life TV on 18th August, 2021, and ZMW20,000.00 cash deposit on the same day and a transfer of ZMW770,000.00 to Madison Finance Limited Fixed Deposit Account on 31st August, 2021.

8.43 Our analysis of narrations of the notable cash deposits and DDAC credits between February 2019 and August 2021 shows that they do not state where the money was coming from or the purpose for which they were being deposited. In addition, three of the four Bank Accounts we have highlighted herein show that they had similar cash deposits of ZMW95,000.00 and ZMW99,000.00 deposited on the same days, that is, on 10th and 11th August, 2021, respectively.

8.44 Considering the large sums of money that were being deposited so close to each other in dates, and the fact that the 1st Interested Party sought to have the Contract of Sale for the Ibex Hill Property put in her

brother's name, we are of the view that this raised reasonable suspicion as to the source of the money.

8.45 We have also perused what has been titled "Ledger Chart Accounts" from the Zambia National Broadcasting Corporation for Musonda Faith M. produced by the Applicant showing the earnings of the 1st Interested Party, from January 2013, to December 2013, totalling ZMW823,977.00 and from the Zambia Development Agency showing "List of Payments to Faith Musonda from 17th December, 2018 to 17th June, 2020 totalling ZMW587,820.02, as per exhibit **"FK20a-b"** while total salaries from ETG has been placed at the sum of ZMW720,000.00. Thus, the 1st Interested Party's total known earnings have been placed at ZMW2,133,797.00. On the other hand, the total value of the assets owned directly or indirectly through the Companies by the 1st Interested Party is US$204,344.53 and ZMW13,575,110.02 respectively.

8.46 Based on the foregoing facts showing that the Properties were acquired during the same period as these suspicious Bank transactions took place into the 1st Interested Party's Bank Accounts, her legitimate earnings highlighted herein and her failure to offer an explanation when called upon to do so, we find that the Applicant had a factual basis for suspecting that the properties were proceeds of crime.

8.47 Having found that the Applicant has proved to the required standard the factual basis for reasonably

suspecting that the property is reasonably suspected to be proceeds of crime, the evidentiary burden at this point shifts to the Interested Parties to demonstrate to the Court's satisfaction that the property in question was acquired through legitimate means and in this regard, they are expected to offer evidence to support their explanation.

8.48 This is in accordance with **Section 71(2)** of the **FPOCA** which provides as follows:

> ***"(2) It is a defence under this section, if a person satisfies the court that the person has no reasonable grounds for suspecting that the property referred to in the charge was derived or realized, directly or indirectly, from any unlawful activity."***

8.49 In these Proceedings, the Interested Parties have filed Affidavits in Opposition and deposed that the 1st to 4th Interested Parties have legitimate sources of incomes. The 1st Interested Party has in her Affidavit stated that she raised a question on how resources accumulated over a considerable period of time could suddenly be perceived as proceeds of crime by the Applicant.

8.50 She further stated that she had been recruited by international firms for pivotal leadership roles in esteemed companies such as SABC and Tsogo Sun of Hotels (Southern Sun) in Pretoria. She added that she had assumed Senior Management roles in ZNBC, ZDA and ETG where she received gratuities and other

payments in form of allowances including from local and international travel.

8.51 The 1st Interested Party further referred to contracts as a Communications Expert engaged by large Mobile Network providers, as well as offering high value consultancy services to both local and international firms. She also stated that she acquired Government Bonds and Treasury Bills by utilising funds obtained from the sale of one of her properties and that she had also been running businesses. With respect to the Chisamba Farm, she stated that it was acquired through a mortgage arrangement.

8.52 We have perused the 1st Interested Party's Affidavit and we note that despite her eloquent explanation of her sources of income, she has not produced any evidence to show that the stated properties were acquired from a legitimate source. She has alluded to contracts with reputable local and international firms but these contracts have not been exhibited. She has not provided any details of the property she allegedly sold to purchase the Government Bonds and Treasury Bills, whereas the narrations for the sources of the money mostly deposited as cash in her Accounts were silent.

8.53 What was clearly shown was that ultimately the money was withdrawn to buy Treasury Bills and 10 Year Government Bond Investment worth ZMW614,785.92 on 23rd April, 2021 and another one

worth ZMW669,000.00, on 3rd May, 2021, as well as investment in Madison Fixed Term Deposits of ZMW240,000.00 on 20th August, 2021 and ZMW770,000.00 on 31st August, 2021 from the 1st Interested Person's Personal Accounts and OCK Investments Limited Account.

8.54 We also note that although these amounts with respect to the Government Bonds and Treasury Bills are different from the amounts of ZMW3,140,000.00, issued on 25th January, 2021, and ZMW1,100,000.00, issued on 7th June, 2021, respectively, the evidence in exhibit **"FK14"**, which is a "Holders Statement" from Bank of Zambia, and Madison Term Deposit Certificate No. 11 exhibited as **"FK16a"** shows that the 1st Interested Party has these Investments subject of these Proceedings.

8.55 In addition, there is no proof before us of her rental income or Lease Agreements let alone proof of payment of Withholding Tax. She has not produced contracts or proof of payments made to her in her high value consultation and other services she offered to both local and international firms and from running her business that she alleged dated back to 2014 and was well documented. There is also no evidence that the jewellery that she was found in possession of, were indeed gifts.

8.56 With respect to Farm No. 1504/A situate in Chisamba, the 1st Interested Party stated that it was

purchased by way of mortgage but she has not responded to the Statement made by Mr. George Handa that she made payment for the purchase of the said property at the sum of ZMW4,600,000.00, although the Contract was entered into by Sela Properties and George Handa and Others.

8.57 In relation to the assertion that the Farm was purchased through mortgage, the Lands Printout **"FK7"** shows that the Assignment and Certificate of Title were done on the same day, being 1st July 2021, while the Mortgage was registered four months later on 24th November, 2021.

8.58 Further, a perusal of PACRA Print out for Vintage Services Limited **"FK21a"** shows that its nature of Business is "Management Consultancy activities and Creative Arts and entertainment activities". There is no evidence as to whether this nature of business could generate ZMW4,000,000.00, to lend to Sela Properties Limited, nor is there evidence that Sela Properties conducts any business from where the balance of ZMW600,000.00, was sourced. The 1st Interested Party has not disputed the allegation that she is a Shareholder of Vintage Limited, and the PACRA Print out produced by the Applicant appears to be incomplete as there are two Shareholders whose shares total up to 17,000 of the 25,000 shares. There is no evidence of these Companies being Tax

compliant or showing their Returns or Financial Statements.

8.59 Similarly, we note the Affidavit filed by **James Chaponda** wherein he stated that the 1st Interested Party purchased a proposed Subdivision of Subdivision No. F/378a/11 Ibex Hill, which was developed by the 3rd and 4th Interested Parties. The 3rd and 4th Interested Parties have not adduced any evidence to prove that their line of business has the capacity to develop the Property or to show that their interest in the stated property was obtained before the commission of a serious offence. In essence, the 3rd and 4th Interested Parties have not produced anything before Court to show that they developed the property and therefore that they have an equitable interest.

8.60 As earlier alluded to, once the Applicant has proved a factual basis for having suspicion that the property is reasonably suspected to be proceeds of crime, the evidentiary burden shifts to the person claiming an interest to prove their claim with evidence. Consequently, it was incumbent on the Interested Parties to produce Contracts particularly as these were alluded to by the 1st Interested Party, Lease Agreements and at least a Contract of Sale for the property the 1st Interested Party alleged she had sold to buy Government Bonds and Treasury Bills, taking into account that she had deposed to the thoroughness of her financial history.

8.61 In this vein, we adopt the views expressed in the Kenyan case of **Asset Recovery Agency v Lillian Wanja Muthoni t/a Sahara Consultants & 5 others**[13] wherein it was stated as follows:

> ***....money and assets are not plucked from the air or like fruits from the tree. They can be traced to specific sources- salaries, businesses in which one sells specific items or goods, or provides professional services. There must be books of accounts, stock registered, local purchases and delivery notes showing to whom goods are sold, deliveries made and payment receipts showing from whom payments has been received."***

8.62 In *casu*, the Interested Parties have failed to adduce evidence that the Properties subject of these Proceedings were legitimately acquired.

9. CONCLUSION

9.1 Based on the totality of the foregoing facts, and evidence we find that the Applicant had a reasonable basis for suspecting that the Property subject of these Proceedings was proceeds of crime.

9.2 We find that the Interested Parties have failed to discharge the evidentiary burden that had shifted to them to our satisfaction as envisioned by the **Forfeiture of Proceeds of Crime Act**.

9.3 We, therefore, find that the Applicant has proved its case for Non-Conviction Based Forfeiture Order for tainted Property on a balance of probabilities with respect to the following Properties:

i. proportional sum of US$144,500.00 paid towards the purchase of the proposed subdivision of Plot No. LUSAK/LN_24982/3 (C5, 1#, D4B);

ii. Subdivision No. F/1504 Chisamba;

iii. proposed Subdivision F of Subdivision No. F/378a/11, Ibex Hill measuring 0.60 hectares in extent;

iv. Government Bonds worth ZMW3,140,000.00, Treasury Bills issue No.11/2021TBs in the sum of ZMW1,100,000.00, as well as any interest accrued thereon;

v. Madison Finance Limited Fixed Term Deposits Unit 11404446 in the sum of ZMW1,219,110.02, and any interest accrued thereon;

vi. Assorted Jewels valued between US$3450.00 – US$4,300.00 as per exhibit **"FK17";** and

vii. TAFE Tractor 7515 75HP-unregistered, Plough Disc BD Mounted AF3, Harrow Disc BD GHO-

R Mounted 16, Planter BD PLB-4 Mounted Row, Sprayer Boom Jacto (M) Condor M12, Trailer 5TN Steel Deck.

9.4 Consequently, we Order that the Properties under Paragraph 9.3 herein BE and ARE HEREBY forfeited to the State, to be applied as the Applicant deems appropriate within the confines of the laws.

9.5 Costs are for the Applicant to be taxed in default of agreement.

DELIVERED AT LUSAKA THIS 20TH DAY OF DECEMBER, 2024

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S. M. WANJELANI
HIGH COURT JUDGE

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I. M. MABBOLOBBOLO
HIGH COURT JUDGE

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S. V. SILOKA
HIGH COURT JUDGE