

**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

2023/HPEF/11

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

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

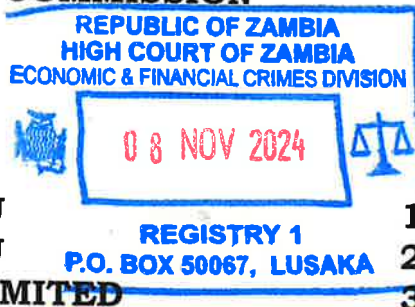
BETWEEN:

ANTI-CORRUPTION COMMISSION

APPLICANT

AND

IN RE: PROPERTY:



USD \$399,500.00

HAKKI SAHUTOGLU

SEZER SAHUTOGLU

DENIZ COMPANY LIMITED

1ST INTERESTED PARTY

2ND INTERESTED PARTY

3RD INTERESTED PARTY

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, P. K.
YANGAILO AND A. MALATA-ONONUJU, ON THIS 8TH DAY OF
NOVEMBER, 2024.**

For the Applicant:

*G. Muyunda, with M. Chizyuka, Anti-
Corruption Commission*

For the Interested Parties:

*A. Wright, Messrs. Andy Wright, with K.
Mwiche & K. Sikazwe Messrs. Jacques
and Partners.*

JUDGMENT

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

Cases referred to:

1. *The Director of Public Prosecutions Vs Lillian Namiye Munalula, Sydney Mwiya Muyamba and Bank of Zambia (2022/HP/0045) (unreported);*
2. *Nkobi Holdings Limited & Another Vs. The State, Case CCT 86/06, (2008) ZACC7;*
3. *Ethics and Anti-Corruption Commission v Patrick Ochieno Abachi & 6 Others (2021) Ekir;*
4. *Simon Prophet v The National Director of Public Prosecutions, Case CCT 56/05;*
5. *Director of Public Prosecutions Vs Michael Kampinda Lushibashi and Inonge Siyauya Lushibashi (2017/HP/1774) (unreported);*
6. *The People v Austin Chisangu Liato Appeal NO.291/2014;*
7. *Chabala vs. The People (19761 ZR 14 (SC);*
8. *Teckla Lameck and Another v President of Republic of Namibia and Others, Appeal No. 54 of 2011;*
9. *Stardy Mwale v the Anti-Corruption Commission Appeal No. 145/2023; and*
10. *Miller v Minister of Pensions (1947) 2 ALL ER 372.*

Legislation referred to:

1. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010;*
2. *The Criminal Procedure Code, Cap 88 of the Laws of Zambia; and*
3. *The Customs & Excise Act, Cap 322 of the Laws of Zambia.*

1.0 INTRODUCTION

- 1.1 This Matter was commenced by way of Originating Notice of Motion on 1st March, 2023, and filed pursuant to **Sections 29, 31 and 71(1) of the Forfeiture of Proceeds of Crime Act (FPOCA)**. The Application was accompanied by an Affidavit in Support, List of Authorities and Skeleton Arguments.

- 1.2 The Interested Parties opposed the Application through an Affidavit and Skeleton Arguments filed on 5th June, 2023.
- 1.3 A number of preliminary issues were raised by the Interested Parties and determined by the Court, one of which resulted in the Applicant being granted Leave to amend the Affidavit in Support of the Originating Notice of Motion.

2.0 **AFFIDAVIT EVIDENCE**

- 2.1 The Amended Affidavit filed in support of the Originating Notice of Motion was sworn by **Chansa Musonda**, an Investigative Officer, in the employ of the Applicant and is a Case Officer investigating the subject matter of these proceedings.
- 2.2 The Deponent stated that the Applicant received a complaint on 29th August, 2022, alleging corruption against Turkish businessmen conducting block making business who have been illegally carrying money in bags without declaring it to the Airport Authorities as they usually paid off bribes to be given VIP treatment for carrying such huge amounts of money.
- 2.3 The Deponent stated that the details of the allegation were that on 2nd September, 2022, a man, by the name of Mr. Hakki Sahutoglu, would be going to Turkey abode Ethiopian Airlines via Kenneth Kaunda International Airport (KKIA) and would be carrying money exceeding USD\$200,000.00. He stated that a surveillance operation was then mounted and the Interested Parties, in the company of one other person known as Ibrahim Sahutoglu who was visiting from Turkey, were then intercepted at the KKIA in Lusaka

immediately after checking-in as they were heading to the verification table.

- 2.4 He further deposed that when the Interested Parties were requested to reveal what they were carrying, they opened their bags in the presence of Officers from the Applicant and that one of the bags was stashed with the United States Dollar Bills which were wrapped in bundles of varying sizes and some of them had name tags attached to them.
- 2.5 The Deponent avowed that the 1st Interested Party stated that the amount was approximately US\$160,000.00, and he was later corrected by the 2nd Interested Party who stated that they were carrying approximately US\$300,000.00.
- 2.6 The Deponent stated that a search was carried out on their person and ZMW6,400.00, was found on the 2nd Interested Party. But that a search of the Interested Parties' vehicle parked at the Airport did not yield any valuable items.
- 2.7 He averred that the money was taken to the Bank of Zambia, in the company of the 1st Interested Party, where it was counted and it was established that the amount was US\$399,500.00, in varying denominations and it was then deposited in one of the Bank of Zambia vaults.
- 2.8 It was deposed that investigations were then instituted and the period of interest for the investigation was from the 1st January, 2022 to the 2nd September, 2022.
- 2.9 The Deponent added that on 3rd September, 2022, under Warn and Caution, the 1st Interested Party confirmed that he was in possession of US\$399,500.00, and that he had withdrawn it from both the Kwacha and Dollar Company

Accounts of the 3rd Interested Party held at ABSA Bank and FNB Bank; that the other amounts were gotten from customers who were paying in Dollars, and to this end, the Deponent produced a copy of the Warn and Caution Statement exhibited as **"CM1a-b"**.

- 2.10 He added that in the Warn and Caution Statement, the 1st Interested Party also indicated that the money was for the Company and 7 other individuals and was meant for machinery purchased at Press Makina in Turkey using a loan facility which was also obtained from Turkey.
- 2.11 It was further deposed that on 5th September, 2022, the recording of the Warn and Caution continued but the 1st Interested Party opted to remain silent with regards to the identity of the 7 individuals who had given the money, and instead mentioned that he was going to give the money to the families of the 7 individuals as per the exhibited copy of the Warn and Caution Statement marked **"CM2a-b."**
- 2.12 It was averred that the 1st Interested Party refused to state the breakdown of the money that he was going to give the 7 families or to disclose the sources of the money that they had given him, let alone disclose the amount of money meant for the Company.
- 2.13 He stated that under Warn and Caution, the 2nd Interested Party stated that the money was from the Bank and Exchange Bureau and that he was going to provide documentation, and further that the money was from the block making business as per exhibit **"CM3a-b"**. That subsequently, on the 26th of September, 2022, Messrs.

Haimbe Legal Practitioners Advocates provided the following documents as proof of the sources of the said money:

2.13.1 Bank Statements from ABSA (Z) Limited for 3rd Interested Party;

2.13.2 Bank Statements from Indo Zambia Bank for 3rd Interested Party;

2.13.3 8 Lists of payments received by Deniz Company of goods supplied to Zhonding JV Wahkong Company for an on-going construction project; and

2.13.4 Commercial Invoices and Bills of Lading of machinery imported into Zambia by 3rd Interested Party.

2.14 The Deponent averred that a search was then conducted at ABSA Bank Dollar Account No. 001-10222200 belonging to the 3rd Interested Party which revealed that from 1st January, 2022 to 23rd June, 2022, a total amount of USD\$136,100.00, was withdrawn from that Account at various intervals and amounts. He added that from 23rd to 30th August, 2022, a total amount of USD\$60,000.00 was also withdrawn from the said Account at various intervals and amounts.

2.15 The Deponent added that the said money was withdrawn in amounts ranging from USD2,100.00 being the minimum and the maximum was USD20,000.00. He also averred that another search was conducted at ABSA Bank, Kwacha Account No.17-1036208, belonging to the 3rd Interested Party which revealed that ZMW160,000.00, was withdrawn between 17th and 23rd June, 2022, which was equivalent to US\$9,523.81.

- 2.16 He deposed that a search was also conducted on the FNB Dollar Account belonging to the 3rd Interested Party where no cash withdrawals were made in the period under review. He added that a search was also conducted on the 3rd Interested Party's FNB Kwacha Account No. 62863733228, which revealed that payments were being made to suppliers of their raw materials such as quarry, cement, stones and other bills but there were no withdrawals in the period of interest.
- 2.17 He also stated that a search was further conducted on the Investrust Bank Kwacha Account No. 2301103396642019 belonging to the 3rd Interested Party and it revealed no transactions in the period of interest, and the last transaction was in May, 2019.
- 2.18 The Deponent averred that the search was also extended to Indo-Zambia Bank Kwacha Account belonging to the 3rd Interested Party which revealed that payments were being made to suppliers of their materials such as quarry, stones, and other bills.
- 2.19 It was deposed that from all the Bank Statements that had been provided by the Interested Parties, only a total of USD\$60,000.00, was withdrawn two (2) months prior to the 1st and 2nd Interested Parties being intercepted at the KKIA. He also stated that the 8 Lists of payments received by the 3rd Interested Party for goods supplied to Zhonding JV Wahkong Company for an on-going construction project contained schedules which were showing dates, delivery number, description, quantity and unit price in Dollars as

well as the total in Dollars. He added that three of these Schedules had Tax Invoices attached to them showing payments made in Kwacha via both cash and bank transfers, as per exhibit **"CM11a-h."**

- 2.20 The Deponent stated that the documentation provided by the Interested Parties did not have receipts showing that the Kwacha cash payments were converted to Dollars while the Commercial Invoices and Bills of Lading of machinery imported into Zambia by the 3rd Interested Party show that the machinery was indeed brought into Zambia, but that they did not indicate the proof.
- 2.21 He added that the explanation and documentation provided by the Interested Parties did not prove that the USD\$399,500.00, that the Interested Parties had, came from both the Bank withdrawals and Cash sales.
- 2.22 The Deponent further stated that a search was conducted at the Zambia Revenue Authority (ZRA) where it was established that the 3rd Interested Party was not compliant with Pay As You Earn (PAYE) and it is owing the Authority the sum of ZMW29,317.21 as per Compliance Status Report as at 14th September, 2022, exhibited as **"CM13"**.
- 2.23 The Deponent contended that from the foregoing, he had a reasonable suspicion that the said amount of USD\$399,500.00, was proceeds of crime.
- 2.24 In response, the Interested Parties filed an Affidavit in Opposition sworn by **Hakki Sahutoglu**, the 1st Interested Party, who deposed that he is a Director in the 3rd Interested Party, and that contrary to Applicant's Deponent's assertion,

he was never asked to disclose the contents in his laptop bag but that the Applicant's Officers merely asked him to open it and they found the said foreign currency.

2.25 The Deponent narrated that the formation of the company with his first cousins, Taccidin Sahutoglu, Cahit Sahutoglu and Gadir Sahutoglu was from savings from a family business in Turkey, including being involved in block manufacturing. He referred to an official visit in July, 2010, by the late Zambian President Mr. Ruphia Bwezani Banda in which the latter held a meeting with the Turkish Business Community in Ankara, to encourage the Turkish business people to invest in Zambia.

2.26 The Deponent stated that following the said Meeting in Ankara, his cousin, Gadir Sahutoglu, visited Zambia on a fact-finding mission and found that Zambia was a good investment destination and the family decided to invest in Zambia and incorporated the 3rd Interested Party on 1st December, 2011, for the purpose of carrying on business activities such as transportation, freight transport by road, accommodation; restaurants and mobile food services, wholesale and retail trade, repair of motor vehicles and motorcycles, stalls or markets, construction, construction of buildings, manufacturing, carpentry and joinery.

2.27 The Deponent stated that the Shareholders of the 3rd Interested Party, of which he is a Director, are his first cousins, Taccidin Sahutoglu, Cahit Sahutoglu and Gadir Sahutoglu, and that the 3rd Interested Party was granted an Investment Licence, exhibit **"HS4"** by the Zambia

Development Agency on 3rd January, 2012, to invest United States of America Dollars Five Hundred Thousand (US\$500,000.00) in the construction sector by way of the provision of construction services.

2.28 He deposed that in 2012, the 3rd Interested Party began operations with a setup of its first block manufacturing factory at Plot No.14100/M/2 Kasama Road, in Lusaka with an initial investment of about US\$350,000.00, and within six months, three other sites were opened bringing the total value of investment to about US\$1,000,000,000. He added that the 3rd Interested Party now has Fifteen branches, Nine (9) in the Lusaka Province, One (1) on Central Province and five (5) on the Copperbelt Province and exhibited some Lease Agreements for some of the sites collectively as **“HS5.”**

2.29 The Deponent stated that the 3rd Interested Party’s major business activity is the manufacturing of concrete blocks, pavers and curb stones at all their Fifteen Sites and that its annual turnover since commencement of operations in 2012, has been growing steadily over the years.

2.30 He avowed that in 2019 the turnover was ZMW12,513,796.00, (approximately US\$899,395.00); in 2020 the turnover was ZMW13,505,282.00 (approximately US\$899,395.00); and 2021, the turnover was ZMW28,843,158.00 (approximately US\$1,728,170.04) and the projected turnover for 2022 was ZMW 50,843,282.00 (approximately US\$2,810,573.00). To this end, he exhibited the 3rd Interested Party’s Company Profile and copies of the

Financial Statements for 2019, 2020 and 2021, in exhibits **"HS6"** and **"HS7"**.

- 2.31 The Deponent vied that the 3rd Interested Party has a workforce of one hundred and thirty-two (132) local employees on fixed term contracts; three hundred and fifty-two (352) on short term contracts, two hundred (200) casual workers; and seventy (70) Expatriates with a monthly wage bill of Zambian Kwacha One million (ZMW1,000,000.00).
- 2.32 He contended that the 3rd Interested Party is a legitimate enterprise carrying on business in the Republic of Zambia and has business assets inclusive of plant, machinery and equipment imported and deployed at its Fifteen (15) factories currently valued at about Zambian Kwacha One Hundred and Two Million Nine Hundred and Eighteen Thousand Eight Hundred and Ten (ZMW102,918,810.00) which is approximately (US\$5,717,711.00). A copy of the Valuation Report of the 3rd Interested Party's assets was produced and marked **"HS8."**
- 2.33 The Deponent also stated that the 3rd Interested Party has been paying its various taxes to ZRA from inception and in 2020, it declared total sales in the sum of Zambian Kwacha Fourteen Million, Four Hundred and Forty-Four Thousand, Two Hundred and Twenty-Four, Ninety-Three Ngwee (ZMW14,144,224.93) for purposes of Value Added Tax. He added that in 2021, the 3rd Interested Party declared total sales in the sum of Zambian Kwacha Twenty-Eight Million, Eight Hundred and Eighty-Five Thousand, Eight Hundred

and Twenty-Five, Seven Ngwee (ZMW28,885,825.07) for purposes of Value Added Tax as per exhibits **“HS9-10.”**

- 2.34 He further averred that in 2022, the 3rd Interested Party declared total sales in the sum of Zambian Kwacha Forty-Two Million, Seven Hundred and Sixty-Four Thousand, Seven Hundred and Eighty-Seven, Seventy-One Ngwee (ZMW42,764,487.71) for purposes of Value Added Tax as per exhibit marked **“HS11”**.
- 2.35 The Deponent avowed that the 3rd Interested Party is not involved in any illegal activity and has been able to grow its business through the hard work of its Shareholders, employees, stakeholders, and clients.
- 2.36 He added that he had been planning to take a trip to Turkey since 2020 to meet with the 3rd Interested Party's suppliers of plant, machinery, and spares, BKR Dis Ticaret Ltd Sti, a company based in Turkey with whom the 3rd Interested Party has had an account since 2012, and from whom it has bought machinery and spares estimated to be over United States of America Dollars Four Million (US\$4,000,000.00), which has been shipped and delivered to its premises at various times since commencement of business.
- 2.37 The Deponent stated that he was unable to travel to Turkey earlier as planned due to the Covid-19 pandemic but in September, 2022, he decided to travel to Turkey to settle the account for plant machinery and spares and to attend to the birth of his daughter who was born on 12th September, 2022.
- 2.38 He averred that on Friday 2nd September, 2022, he was booked on an Ethiopian Airlines flight to travel to Turkey

which was scheduled to depart Lusaka at 15:45 hours and had in his possession two suitcases, a carryon bag and a laptop bag which he was carrying over his shoulder and which contained among others personal papers, foreign currency.

- 2.39 He vied that he was traveling with his brother, Ibrahim Sahutoglu, the 2nd Interested Party, who was returning to Turkey after having visited Lusaka, and that his nephew had driven them to the Airport.
- 2.40 He stated that the foreign currency he was carrying was not concealed as it was on him and that he had every intention to declare it with the Customs Office at the Airport as he was well aware that the Regulations required one, when exporting foreign currency, to complete a 'Customs and Excise Currency Declaration Form CE10' to declare the currency in his possession, and exhibited the said Form as **"HS16"**.
- 2.41 He averred that upon arrival at the Airport around 13:30 hours, he proceeded to the Check-in Counter and checked in for his flight upon which he was issued with a Boarding Pass. He added that whilst in the Checking-in area on his way to the Security Check-point, he was surrounded by Officers from the Applicant and other security agencies, and taken into an Office where the 2nd Interested Party, and himself were held, questioned and their luggage searched for over two hours.
- 2.42 He contended that during the questioning, the Officers from the Applicant threatened him and put the fear of God into

him, while some were taking photos and videos on their phones, leaving him traumatised as he genuinely feared for his life.

- 2.43 The Deponent stated that following the search, they were driven to Bank of Zambia by Officers from the Applicant where the currency from his laptop bag was counted and recorded as being United States of America Dollars, Three Hundred and Ninety-Nine Thousand Five Hundred (US\$399,500.00.) and Zambian Kwacha Six Thousand Four Hundred (ZMW6,400.00) as per exhibit **"HS17"**.
- 2.44 The Deponent vied that they were later detained on Saturday, 4th September, 2022, and that on Monday 5th September, 2022, he was questioned, warned and cautioned upon which he gave a Statement. He added that on Sunday, 4th September, 2022, the Applicant's Officers, in his presence, undertook searches at his place of residence and two of the 3rd Interested Party's factories in Lusaka and among other things, a sum of Zambian Kwacha Forty-Four Thousand Six Hundred and Seventy-Four (ZMW44,764.00) being the sales for the day was collected as exhibits.
- 2.45 The Deponent averred that on 5th September, 2022, he was formally charged and arrested for the offence of being in possession of property suspected of being proceeds of crime and on the same date he was released on Police Bond. He deposed that the whole experience of being questioned, detained, arrested and being kept in very unfriendly environment in the Police cells for three days was traumatic as never in his life had he been subjected to such.

- 2.46 He vied that the money he was carrying on his person belongs to the 3rd Interested Party as he was going to settle part of the outstanding account with BR Dis Ticaret Ltd Sti, a company based in Turkey, from which the 3rd Interested Party has been procuring equipment and spares for its business since 2012.
- 2.47 He explained that he was carrying cash for business purposes because the inflation in Turkey and the exchange losses incurred when funds are transferred to Turkey through the banking system would make the purchase of the equipment uneconomical.
- 2.48 The Deponent also stated that the 3rd Interested Party's various clients are allowed to pay in cash or by way of bank transfer within Zambia in Kwacha or foreign currency and it is currently operating Accounts with ABSA Zambia Bank Longacres Branch, First National Bank, Kitwe Branch; Stanbic Bank, Kafue Branch, and Indo-Zambia Bank, Kitwe. He added that one such client referred to is Zhonding Wah Kong Limited, a Contractor engaged to build the King Sulman Hospital in Lusaka, with whom the 3rd Interested Party, in 2021, entered into an agreement for the supply of concrete building blocks, as per exhibit **"HS20."**
- 2.49 He added that in 2021, the 3rd Interested Party supplied Zhonding Wah Kong Limited with blocks worth United States of America Dollars Seventy-Seven Thousand and Ninety (US\$77,090.00) and between 1st January, 2022, and 30th June, 2022, blocks worth United States of American Dollars

One Hundred and Fifty Thousand One Hundred and Thirty-Eight (US\$150,138.00) had been supplied.

- 2.50 The Deponent deposed that the 3rd Interested Party's clients make cash payments in US Dollars, and that the money is kept in cash to hedge against the devaluation of the currency in order for the 3rd Interested Party to meet its obligations to its plant machinery and spares suppliers. He also stated that it is the practice of the 3rd Interested Party to convert some of the income it generates into US Dollars to hedge against devaluation and that money is converted by way of purchase of foreign currency through its Kwacha Bank Accounts.
- 2.51 The Deponent stated that since 2020, when the 3rd Interested Party decided that he travels to Turkey to settle the 3rd Interested Party's Account, the 3rd Interested Party has been purchasing foreign currency and withdrawing foreign currency from its various Bank Accounts for the purpose of the trip.
- 2.52 He vied that in 2020, the 3rd Interested Party Company purchased United States Dollars' worth Zambian Kwacha One Million, Seven Hundred and Eighty One Thousand, Eight Hundred and Fifteen and Fifty Ngwee (ZMW1,781,815.50) which is approximately United States of America Dollars One Hundred Eighteen Thousand, Seven Hundred and Eighty-Seven and Seventy Cents (US\$118,787.70), while in 2021, the 3rd Interested Party purchased United States Dollars' worth Zambian Kwacha Six Million, Four Hundred and Eighty-Three Thousand, Five Hundred and Thirty-Three and Sixty-Four Ngwee

(ZMW6,483,533.64) which is approximately United States of America Dollars Four Hundred and Five Thousand, Two Hundred and Twenty and Eighty-Five Cents (US\$405,220.85).

- 2.53 The Deponent added that between 1st January, 2022, and 24th August, 2022, the 3rd Interested Party purchased United States Dollars' worth Zambian Kwacha One Million, Two Hundred and Eighty-Seven Thousand, Nine Hundred (ZMW1,287,900.00) which is approximately United States of America Dollars Seventy-One Thousand Five Hundred and Fifty (US\$71,550.44.)
- 2.54 He also stated that between 1st January, 2022, and 30th August, 2022, United States Dollars One Hundred and Sixty Thousand One Hundred (US\$162,100.00) was withdrawn by the 3rd Interested Party from its Foreign Currency Account held at ABSA Bank Kafue House Branch. That between 5th October, 2021, and 31st August, 2022, United States Dollar Twenty-Two Thousand (US\$22,000.00) was withdrawn by the 3rd Interested Party through its Stanbic Account Kafue Branch. Exhibits marked **"HS21-25"** were produced to show the various transactions.
- 2.55 The Deponent added that some of the money in foreign currency in his possession was given to him by members of the Turkish Community in Zambia to take to their families and the said amount was not in excess of United States of America Dollars Sixty Thousand (US\$60,000.00).
- 2.56 He contended that the money that was in his possession was not obtained from any illegitimate activities but from the

3rd Interested Party's business activities as the money was withdrawn from its Bank Accounts, purchased as foreign exchange and earned in sales between 1st January, 2020, and 31st August, 2022, and that as demonstrated, it was in excess of United States of America Dollars Eight Hundred and Sixty-Five Thousand, One Hundred Twenty-Two and Seventy-Eight Cents (US\$865,122.78.).

2.57 He stated that from the foregoing the United States of America Dollars Three Hundred and Ninety-Nine Thousand Five Hundred (US\$399,500.00.) and Zambian Kwacha Six Thousand Four Hundred (ZMW6,400.00) is legitimate money that belongs to the 3rd Interested Party and cannot be deemed to be proceeds of crime.

2.58 The Applicant filed an Affidavit in Reply deposed to by **Chansa Musonda**, the gist of which was that most of the averments in the Affidavit in Opposition were within the peculiar knowledge of the 1st Interested Party. He reiterated his averments as regards the surveillance operation and the picking up of the Interested Parties and stated that at no time were threats made to the 1st or 2nd Interested Party.

2.59 The Deponent averred that the 2nd Interested Party signed an "ACC Form 12," at the point of a body search being conducted, acknowledging that the total amount retrieved from him was ZMW6,400.00, and that the Interested Parties were afforded an opportunity to render an explanation when the Warn and Caution Statements were recorded.

2.60 It was his contention that while the 3rd Interested Party's major business activity is manufacturing concrete blocks,

the Bank Statements show that only a total of USD\$60,000.00, had been withdrawn prior to interception at the Airport on 2nd September, 2022.

2.61 The Deponent stated that the Invoices and Financial Statements exhibited by the Interested Parties relate to a period between 27th May, 2016 to 3rd September, 2020 which periods are dates before the surveillance operation and do not explain the 1st Interested Party being found in possession of the USD399,500.00, on 2nd September, 2022. And that exhibit “**HS16**” being the *Customs Declaration Form* was not populated and cannot be used to deduce an intention to declare as averred by the 1st Interested Party.

3.0 **SKELETON ARGUMENTS**

3.1 The respective Parties’ Counsel filed Skeleton Arguments. The Applicant stated that the matter having been brought by way of Originating Notice of Motion for Non-Conviction Based Civil Forfeiture Orders pursuant to **Sections 29 and 31** of the **Forfeiture of Proceeds of Crime Act**, for the forfeiture to the State of alleged tainted property reasonably suspected of being proceeds of crime, means that this Court has the jurisdiction to hear this Application and the same is not affected by the outcome of any criminal proceedings or investigation.

3.2 It was submitted that the Affidavit in Support had demonstrated that the examination of the Bank Statements from Absa Bank, Investrust Bank and First National Bank does not demonstrate that the money in the sum of

USD399,500.00, was entirely withdrawn from these Bank Accounts.

- 3.3 It was submitted that from all the Bank Statements highlighted, only a total of US\$60,000.00 was withdrawn, two (2) months prior to the 1st and 2nd Interested Parties being intercepted at the KKIA and that this amount does not equate to the US\$399,500.00 found in the possession of the 1st Interested Party during the operation by the Officers of the Applicant.
- 3.4 The Applicant's Counsel argued that an analysis of the Eight (8) Lists of Payments received by the 3rd Interested Party from goods supplied to Zhonding JV Wahkong Company for an on-going construction project containing Schedules and some Tax Invoices attached, showed payments made in Kwacha and that the documentation provided by the Interested Parties did not have receipts showing that the Kwacha cash payments were converted to Dollar for the Interested Parties to justify being in possession of the Dollars.
- 3.5 The Applicant stated that there exists no reasonable explanation or justification provided by the Interested Parties to show that the USD \$399,500.00, came from both legitimate Bank withdrawals and cash sales, hence there is a reasonable suspicion that the said amount of US\$399,500.00, is a proceed of crime and that the said money be forfeited to the State.
- 3.6 Counsel submitted that the mode of commencement adopted herein was accepted by the Court in the case of **the Director**

of Public Prosecutions Vs Lillian Namiye Munalula, Sydney Mwiya Muyamba and Bank of Zambia⁽¹⁾ and that forfeiture orders were subsequently made.

- 3.7 It was submitted that in the case of **Nkobi Holdings Limited & Another Vs. The State⁽²⁾**, the Constitutional Court of South Africa held, *inter alia*, that:

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

- 3.8 Counsel averred that in like manner, illegally acquired property deserves no protection under the law. It was argued that owing to the above, the sum of US\$399,500.00, can be said to have been reasonably acquired from an illegitimate source, there being no trail of where it came from. Counsel stated that they are aware that the Interested Parties are into block making business but there is no trail to show that the said amount came from proceeds of that block making business. It was contended that the above circumstances only leave one inference which is that the Interested Parties are in violation of the law.

- 3.9 Counsel for the Applicant added that it has been demonstrated in the Affidavit in Support of this Application that the possession of the money in question has no legitimate justification and that even having been accorded the opportunity to render an explanation, the Interested Parties have failed to justify their being found in possession of this money.

- 3.10 The case of **Ethics and Anti-Corruption Commission v Patrick Ochieno Abachi & 6 Others⁽³⁾**, was referred to as having affirmed the position that the evidentiary burden in relation to unexplained assets is “prove it or lose it”, and that an individual has the evidentiary burden to offer satisfactory explanation for legitimate acquisition of the asset or forfeit such asset. It was submitted that there is no satisfactory explanation relating to the manner in which the Interested Parties acquired the said US\$399,500.00.
- 3.11 We were also referred to the case of **Simon Prophet v The National Director of Public Prosecutions⁽⁴⁾**, where the Court was called upon to strike an appropriate balance between two constitutional principles: one which is that no one should be arbitrarily deprived of property and the other being that the State is under an obligation to protect members of the public from criminal predations.
- 3.12 Further, Counsel referred us to the case of **Director of Public Prosecutions Vs Michael Kampinda Lushibashi and Inonge Siyauya Lushibashi⁽⁵⁾**, delivered on 19th January, 2022, where this Court, in similar circumstances, held that the property in issue was tainted property and accordingly forfeited it to the State.
- 3.13 In response, Counsel for the Interested Parties submitted that the Applicant has not shown where the Director of Public Prosecution (DPP) appointed them in line with **Section 86 of the Criminal Procedure Code**.
- 3.14 It was argued that **Sections 29 and 71 of the FPOCA** read together with the case of **The People v Austin Chisangu**

Liato⁽⁶⁾ establish that when dealing with **Section 71** of the **FPOCA**, there is no need for a predicate offence to be proved; that reasonable suspicion means a state of conjecture or surmise, where proof is lacking; that proof beyond reasonable doubt or reasonable suspicion was not contemplated or intended when the subject **Section** was formulated.

- 3.15 It was submitted that the standard of proof is on a balance of probability while **Section 71 (2)** of **FPOCA** affords an Accused Person an opportunity to explain the absence of reasonable grounds for the suspicion that the property he was found in possession of, is proceeds of crime.
- 3.16 It was averred that based on the holding in the case of **The People v Austin Chisangu Liato**⁽⁶⁾, the Interested Parties herein have to show that the money found in their possession was not obtained from commission of a crime or an illegal activity. Counsel agreed with the holding in the case of **Nkobi Holdings Limited & Another V the State**⁽²⁾ but argued that the Interested Parties have never engaged in any illegality and thus never benefited from any wrongdoing. It was contended that, that case has no relevance to the case in *casu* as the Interested Parties have genuine source of revenue as verified by the Affidavit in Opposition.
- 3.17 Counsel submitted that it was flawed and misleading for the Applicant to equate the facts herein to those in the case of the **Director of Public Prosecution Vs. Michael Kampinda Lushibanshi and Inonge Siyauya Lushibanshi**⁽⁵⁾ because in the said case, the 1st Interested Party had committed

- offences of fraud and forgery and that the said offences were neither objected to or even an issue in the said proceedings.
- 3.18 It was averred that the 3rd Interested Party has shown its source of income from legitimate enterprise carried on for over a considerable time generating revenues far in excess of the funds that were found in the possession of the 1st Interested Party.
- 3.19 Counsel argued that there is no law that prohibits an individual to have in their possession local or foreign currency but the law dictates for a declaration to be made where one seeks to import or export foreign currency, as stated in **Section 41 (1A)** of the **Customs & Excise Act**.
- 3.20 It was submitted that the 1st Interested Party was stopped at a point where he had checked-in for his flight and was within the Check-in area but before he could proceed to make his declaration in compliance with the law.
- 3.21 Reference was made to the Supreme Court case of **Chabala vs. The People⁽⁷⁾**, a matter involving recent possession and it was submitted that the Affidavit in Opposition clearly provides a reasonable explanation and that this Court ought to find in favour of the Interested Parties and transfer the property to the 3rd Interested Party in line with **Section 31** of the **Forfeiture of Proceeds of Crime Act**.
- 3.22 In the Skeleton Arguments in Reply, the Applicant reiterated its arguments in the main and added that the possession of the money meant for purchase of business equipment in a foreign country does not seem justifiable and raises reasonable suspicion.

3.23 During the hearing, respective Counsel essentially rehashed the averments in the respective Affidavits and Skeleton Arguments. We do not find it necessary to repeat the same.

4.0 **CONSIDERATION AND DECISION OF THE COURT.**

4.1 We have considered the Application, the Parties' respective Affidavits with the exhibits, Skeleton Arguments, List of Authorities and oral submissions for which we are indebted. We find that the following issues are common cause:

4.1.1 The 1st Interested Party is Director in the 3rd Interested Party Company;

4.1.2 The 3rd Interested Party is a registered company whose major business is dealing in manufacturing of concrete blocks, pavers, and curb stones at Fifteen sites Country wide;

4.1.3 On 2nd September, 2022, the 1st and 2nd Interested Parties were intercepted at the Kenneth Kaunda International Airport (KKIA) by some Law Enforcement Officers including some from the Applicant Institution;

4.1.4 The 1st Interested Party had in his possession a laptop bag that contained the sum of US\$399,500.00, while the 2nd Interested Party had a sum of ZMW6,400.00, on his person; and

4.1.5 The 1st Interested Party was intercepted while he was in the checking-in area on his way to the Security Check Point.

4.2 The issue in contention is whether or not the sum of US\$399,500.00, found in possession of the 1st Interested

Party is property reasonably suspected to be proceeds of a crime and therefore subject to forfeiture to the State as sought by the Applicant.

- 4.3 The Applicant seeks a Non-Conviction Forfeiture Order which is civil in nature and whose general principle was aptly explained in the case of **Teckla Lameck and Another v President of Republic of Namibia and Others**⁽⁸⁾ 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.”

- 4.4 This position is similarly reflected in the **FPOCA** in **Section 31(4)** as follows:

“The validity of an order[forfeiture] under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated”.

4.5 In *casu*, this application has been made pursuant to **Sections 29, 31 and 71(1)** of the **FPOCA**, which provide for the mode of commencement; who can make the application; and the standard of proof as well as what is required of the Interested Party to prove his/her interest in the subject property.

4.6 **Section 29** of the **FPOCA** provides that:

"A public prosecutor may apply to a Court for an order forfeiting to the State all or any property that is tainted property."

4.7 The Interested Parties have submitted that there is no evidence that the Applicant is a Public Prosecutor appointed by the Director of Public Prosecution in line with the provisions of the **Criminal Procedure Code**. The Applicant's Counsel did not address this allegation in their Skeleton Arguments.

4.8 Be that as it may, this Court dealt with a similar allegation and our holding was confirmed by the Court of Appeal in the consequent Appeal, in the case of **Stardy Mwale v the Anti-Corruption Commission**⁽⁹⁾ in the following words:

"it is well settled that the DPP wields prosecutorial powers in this jurisdiction and is not subject to direction by any person or authority. Therefore, all prosecutions are done for or on behalf of the DPP. In casu, the Respondent is conferred with prosecutorial powers in Section 6 of the Anti-Corruption Act, subject to the direction of the DPP. It must be noted that the Respondent is a public

body created as a body corporate in Section 4 of the Anti-Corruption Act. Therefore, in the absence of any evidence to the effect that the DPP has issued directives to the Respondent not to prosecute any matters, we have no hesitation in holding that the Respondent is a public prosecutor for purposes of taking out proceedings under the Act and carrying out prosecutions of matters under its mandate. Therefore, it can properly be referred to as a public prosecutor within the confines of Section 2 and 86 of the CPC.”

- 4.9 With respect to the substantive matter, **Section 31** of the **FPOCA**, one of the **Sections** pursuant to which this Application has been commenced, states as follows:

“(1) Subject to subsection (2), where a public prosecutor applies to the court for an order under this section and the court is satisfied on a balance of probabilities that the property is tainted property, the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the State.”

- 4.10 According to **Section 2** of the subject **Act**, tainted property in relation to a serious offence or a foreign serious offence, means—

“(a) any property used in, or in connection with the commission of the offence;

(b) property intended to be used in, or in connection with, the commission of the offence; or

**(c) proceeds of the offence;
and when used without reference to a particular
offence means tainted property in relation to a
serious offence;...”**

4.11 The Section further defines a “serious offence” as:

**“an offence for which the maximum penalty
prescribed by law is death, or imprisonment for
not less than twelve months.”**

4.12 And the Section provides further as follows:

**“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 realized
directly or indirectly, by any person from the
commission of a serious offence or a foreign
serious offence;**

**(b) wholly or partly derived or realized 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
realized directly from the serious offence or
foreign serious offence is later converted,
transformed or intermingled, and any
income, capital or other economic gains**

derived or realized from the property at any time after the offence; or

(d) any property that is derived or realized, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would, if the act or omission had occurred in Zambia, have constituted a serious offence;...”

4.13 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 Act.

4.14 The Applicant has alleged that the Interested Parties were in possession of property reasonably suspected to be proceeds of a crime contrary to **Section 71** of the **FPOCA**, which provision states, *inter alia*, as follows:

“1. A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Zambia any money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence and is liable upon conviction to—

(a) if the offender is a natural person, imprisonment for a period not exceeding five years; or

(b) if the offender is a body corporate, a fine not exceeding seven hundred thousand penalty units.

4.15 The standard of proof in determining an application for forfeiture of tainted property where there is no conviction, is on a balance of probabilities. This is also alluded to in **Section 78** of the **FPOCA** provides that:

“save as otherwise provided in this Act, any question of fact to be decided by the court in the proceedings under this Act is to be decided on the balance of probabilities.”

4.16 It is clear from **Section 31** of the **FPOCA** and the above provision that for the Court to grant a Non-Conviction Based Forfeiture Order, the Applicant must prove, on a balance of probabilities, that the property in dispute is tainted property. Lord Denning, in explaining the meaning of “a balance of probabilities” in the case of **Miller v Minister of Pensions**⁽¹⁰⁾ stated as follows:

“It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: ‘we think it more probable than not’ then the burden is discharged.”

4.17 The Applicant has to show firstly, that a person was in possession of property and secondly that the said property may reasonably be suspected to be a proceed of crime.

4.18 In the matter in *casu*, it is not disputed that the 1st Interested Party was in possession of the monies that form the subject matter of this Application. The question, is whether the stated money may be property reasonably suspected to be proceeds of a crime.

4.19 The concept of reasonable suspicion was tackled by the Supreme Court in the case of **The People v Austin Chisangu Liato**⁽⁶⁾, wherein it was explained 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”.

4.20 The Applicant's Deponent stated that they received a complaint on 29th August, 2022, alleging corruption against Turkish businessmen conducting block making business who had been illegally carrying money in bags without declaring it to the Airport Authorities as they usually paid off bribes to be given VIP treatment for carrying such huge amounts of money.

4.21 It was deposed that a surveillance was mounted on 2nd September, 2022, the date on which it was alleged that the 1st Interested Party, Hakki Sahutoglu, would be going to Turkey aboard Ethiopian Airlines via KKIA and would be carrying with him money exceeding US\$200,000.00, and

this resulted in the interception and the finding of the US\$399,500.00, subject of these Proceedings.

- 4.22 According to the Applicant, from the Bank Statements presented by the Interested Parties, only a total sum of US\$60,000.00, was withdrawn in the two months prior to the 1st and 2nd Interested Parties being intercepted at the KKIA. It was stated that of the 8 List of payments received by the 3rd Interested Party from goods supplied to Zhonding JV Wahkong Company for an ongoing construction Project, three of the Schedules had Tax Invoices attached to them and showed payments made in Kwacha. It was argued that the 3rd Interested Party had not provided any receipt to show that the Kwacha cash payments were converted to Dollars.
- 4.23 Based on the foregoing and the fact that the 1st Interested Party had in his possession the sum of \$399,500.00, and there being no withdrawals from the Bank Accounts totalling to that amount, it was contended that the Applicant formed a reasonable suspicion that the said monies may be proceeds of crime.
- 4.24 The Interested Parties, in response, stated that the money in dispute was not obtained from any illegitimate activities but was money from the 3rd Interested Party's business activities as the money was withdrawn from its Bank Accounts, purchased as foreign exchange and earned in sales between 1st January, 2020, and 31st August, 2022.
- 4.25 They also produced a number of documents including Lease Agreements with respect to some of the 3rd Interested Party's operating sites, Commercial Invoices for the supply of

machinery, Bank Statements, albeit, some were outside the Applicant's period of interest, some Financial Statements signed by the 3rd Interested Party's Directors as well as a Valuation Report of the 3rd Interested Party's assets.

4.26 We note that the Applicant has not explained why the period of interest is between 1st January, 2022, to 2nd September, 2022. In addition, the 1st and 2nd Interested Parties allege that they were intercepted before they could make the declaration as required by law, an allegation not disputed by the Applicant. However, the Applicant states that the "Declaration Form" produced by the 1st Interested Party as exhibited "**HS 16**", is not filled in and thus it could not be concluded that there was an intention to declare the money.

4.27 The requirement to declare the importation or exportation of foreign currency is provided for under **Section 41A** of the **Customs and Excise Act** as follows:

"(1) Any person importing into or exporting from Zambia, currency notes, in any currency, exceeding in value the equivalent of five thousand United States Dollars shall make a declaration in the prescribed form.

(2) Where an officer has reason to believe that a person required to make a declaration under subsection (1) has not made or refuses to make the declaration or where such person has made a declaration and the officer has reason to believe that the declaration is an incorrect or false declaration, the officer may search that person

and any baggage or packages carried by or associated with that person.

(3) Where, after the search referred to in subsection (2), an officer finds currency notes in excess of the amount specified in subsection (1), the officer shall seize the currency notes in excess of that amount and that amount so seized shall be forfeited to the state.

(4) ...

(5) Any person aggrieved by the seizure and forfeiture of his currency notes may appeal to the Commissioner-General against the seizure and forfeiture within thirty days from the date of seizure.” (underline by Court).

4.28 We have also observed that the copy of the Currency Declaration Form exhibited as “**HS 16**” was indeed not filled in, which if it had, could have provided a basis on which this Court could have concluded that the 1st Interested Party intended to declare the foreign currency to the ZRA Officials at the Airport prior to his interception. However, we have not been informed as to at what point in the transition to Departure that, that Form ought to have been filled in and submitted, as it is possible in some instances to fill in and submit Forms at the relevant Counter.

4.29 Furthermore, the cited provisions of the **Customs and Excise Act** provide a procedure to be adopted in the event that a person does not declare the amount in excess of the US\$5000.00, and it is not under the provisions of the

FPOCA. It is trite that the mode of commencement is determined by the relevant statute. In addition, the Applicant has not placed before us any authorities on declaration of foreign currency.

4.30 In any event, the issue in relation to the Application before us is whether the money was from an illegitimate source or not, for it to be reasonably suspected to be proceeds of crime and thus liable to forfeiture to the State.

4.31 Therefore, based on what has been adduced before Court, did the Applicant have a basis for reasonably suspecting that the money found on the 1st Interested Party was proceeds of crime? At this point, we sought solace in the words of Malila, JJS (as he then was) in the case of **The People v Austin Chisangu Liato**⁽⁶⁾ where he stated that:

“... whether grounds for suspicion actually existed at the time the suspicion is formed is to be tested objectively. Consequently, a suspicion may be reasonable even though subjectively it was based on unreasonable grounds. In our considered view, proof of reasonable suspicion never involves certainty of the truth. Where it does, it ceases to be suspicion and becomes fact.”

4.32 The Record shows that the Applicant received a complaint alleging that the 1st Interested Party was in the habit of carrying huge sums of foreign currency out of the Country without declaring it and did so by paying bribes.

4.33 This led to the surveillance operation and indeed, the 1st Interested Party was found with what turned out to be USD

399,500.00, in cash in his laptop bag. In addition, when asked how much it was, he responded that it was US\$160,000.00, but the 2nd Interested Party corrected him and said it was US\$300,000.00, which upon counting at the Bank of Zambia turned out to be US\$399,500.00.

- 4.34 It is our view that based on the complaint, which the Applicant is mandated by law to investigate, the manner in which the huge sum of money was carried, and the 1st Interested Party deliberately disclosing a wrong amount contrary to what he knew he was carrying, gave the Applicant a basis to believe that the money was reasonably suspected to be proceeds of a crime.
- 4.35 Having determined that the Applicant has proved to the required standard the factual basis of premise that the foreign currency 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 or money in question was acquired through legitimate means and they are expected to offer evidence to support their explanation.
- 4.36 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.”

4.37 This provision was succinctly explained in the case of the **People v Austin Liato**⁽⁶⁾ where the Supreme Court established that:

“Section 71(2) of the FPOCA does not impose any obligation on the accused person to prove any ingredient of the offence under Section 71(1) of the Act, but it does afford the accused an opportunity to explain the absence of reasonable grounds for the suspicion that the property he was found in possession of under Section 71(1) were proceeds of crime”.

4.38 A perusal of the evidence shows that the 1st Interested Party is a Director in the 3rd Interested Party and that the 3rd Interested Party is a registered entity that is and has been in the business of manufacturing concrete blocks, pavers and curb stones for some years. There are also Commercial invoices showing the importation of machinery from Turkey from 2013 to about 2019 exhibited as **“HS 12-13”**.

4.39 We also note that it is not in dispute that the 3rd Interested Party’s sales are both in Kwacha and Dollars as shown from the Interested Parties’ exhibited extracts marked **“HS20”** and Bank Statements entries in exhibits **“HS21-HS22.”**

4.40 The Applicant has not disputed the 3rd Interested Party’s claims Value Added Tax declarations to the ZRA marked **“HS 9-11”**, showing that in 2020, it made Zambian Kwacha Fourteen Million, Four Hundred and Forty-Four Thousand, Two Hundred and Twenty-Four, Ninety-Three Ngwee (ZMW14,144,224.93); in 2021, the amount declared of total

sales was Zambian Kwacha Twenty-Eight Million, Eight Hundred and Eighty-Five Thousand, Eight Hundred and Twenty-Five, Seven Ngwee (ZMW28,885,825.07) and in 2022, a total of Zambian Kwacha Forty-Two Million, Seven Hundred and Sixty-Four Thousand, Seven Hundred and Eighty-Seven, Seventy-One Ngwee (ZMW42,764,487.71) was declared. In support of these assertions, the 3rd Interested Party's online ZRA tax submissions extracts were exhibited as **"HS9-11"**.

- 4.41 Apart from the Tax extracts, the Interested Parties have also shown various payments made by Zhonding JV Wahkong Company while other payments were made directly into the Bank Accounts. The Applicant has not disputed or queried the amounts of money flowing into the 3rd Interested Party's Bank Accounts. These documents indicate that the 3rd Interested Party makes sales of considerable value.
- 4.42 The 3rd Interested Party has also produced Financial Statements showing that it has long term liabilities particularly reflected in the Financial Statement as at 31st December, 2021, in exhibit **"HS7"**.
- 4.43 However, we note that the 1st Interested Party did not provide any evidence to support his assertion that some of the money in foreign currency, not exceeding US\$60,000.00, in his possession was given to him by Members of the Turkish Community in Zambia to take to their families, let alone state who those 7 individuals are or where those members got the money from.

- 4.44 The question is, taking into account the facts and documents herein, have the Interested Parties discharged the burden of showing that the subject money cannot reasonably be suspected to be proceeds of crime?
- 4.45 It is our view that the Interested Parties have discharged this burden on a balance of probabilities. This is because the 3rd Interested Party has been shown to have been in operation for a considerable number of years and has been steadily growing and generating income from the block-making business.
- 4.46 We note that while the Valuation Report exhibited as “**HS 8**” in the Affidavit in Opposition, merely shows the current value of the 3rd Interested Party being ZMW102,918,810.00 equivalent to about US\$ 5,717,711.00, the Applicant has not disputed this assertion other than making a blanket statement that the explanation and documentation provided by the Interested Parties did not prove that the US\$399,500.00 came from the Bank withdrawals and cash sales. Therefore, we find that it is more likely than not, that the money, apart from the US\$60,000.00, came from the 3rd Interested Party’s business operations.

5.0 **CONCLUSION**

- 5.1 Thus, on the totality of evidence adduced before us, we find that while the Applicant had a reasonable basis for suspecting that the money was proceeds of crime, the Interested Parties have proved, on a balance of probabilities, that the sum of USD399,500.00, less the US\$60,000.00,

found with the 1st Interested Party, was legitimately earned from the block making business by the 3rd Interested Party.

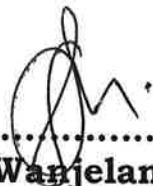
5.2 We accordingly decline to grant the Order of forfeiture relating to the entire sum of US\$399,500.00, and instead direct as follows:

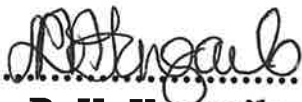
5.2.1 The Applicant shall return the sum of US\$339,500.00, to the 3rd Interested Party forthwith; and

5.2.2 The sum of US\$60,000.00, whose source has not been properly explained to the satisfaction of the Court, is hereby forfeited to the State forthwith.

5.3 Each Party shall bear its own costs.

Delivered at Lusaka this 8th day of November, 2024


.....
S. M. Wanjelani
JUDGE


.....
P. K. Yangailo
JUDGE


.....
A. M. Ononuju
JUDGE