

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

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
ECONOMIC & FINANCIAL CRIMES DIVISION
2024/HPEF/003
30 OCT 2024
REGISTRY 1
P.O. BOX 50057, LUSAKA

IN THE MATTER OF: SECTIONS 61, 58, 87 OF THE ANTI-CORRUPTION ACT NO. 3 OF 2012.

AND

IN THE MATTER OF: AN ORDER THAT FAILURE TO SERVE A FRESH NOTICE OF RESTRICTION FOLLOWING THE EXPIRATION OF ITS INITIAL NINE (9) MONTHS LIFE SPAN RENDERED THE PURPORTED FRESH RESTRICTION NOTICE ILLEGAL AND INVALID.

IN THE MATTER OF: AN ORDER SETTING ASIDE THE WARRANT OF SEIZURE PLACED BY THE RESPONDENT ON THE APPLICANT'S ACCOUNT ON GROUND OF ARBITRARINESS AND ABUSE OF POWER.

IN THE MATTER OF: AN ORDER THAT THE RESPONDENT HAS NO POWER OR AUTHORITY IN MATTERS RELATING TO PROPERTY TRANSFER TAX AS SUCH POWERS ARE EXCLUSIVELY RESERVED FOR THE COMMISSIONER GENERAL OF THE ZAMBIA REVENUE AUTHORITY AS PER PROPERTY TRANSFER TAX ACT AS READ TOGETHER WITH THE INCOME TAX ACT.

BETWEEN:

GODFREY SHAMANENA

APPLICANT

AND

ANTI-CORRUPTION COMMISSION

RESPONDENT

Before the Honourable Lady Justices S. M. Wanjelani, P. K. Yangailo and A. Malata-Ononuju on this 30th day of October 2024.

For the Applicant: Mr. J. Kayula - Messrs. Lewis Nathan Advocate

*For the Respondent: Mrs. G. M. Muyunda Assistant Director
Legal – Anti-Corruption Commission*

RULING

A. MALATA-ONONUJU J., DELIVERED THE RULING OF THIS COURT.

Cases referred to:

1. *Trinity Engineering (PVT) Limited Vs Zambia National Commercial Bank Limited (1995-1997) Z.R. 166 S.C.;*
2. *Zambia Telecommunication Company Limited Vs Aaron Mweenge Mulwanda & Another Appeal No 63 of 2009 S.C.Z.;*
3. *Christopher Lubasi Mundia Vs Sentor Motors (1982) Z.R. 66;*
4. *Mazoka and Others Vs Mwanawasa and Others (2005) Z.R. 138;*
5. *London Passenger Transport Board v Moscrop [1942] A.C. 332;*
6. *Mayo Transport Vs United Dominions Corporation Limited (1962) R&N R22;*
7. *Thynne Vs Thynne (1955) 3 All E.R. 129;*
8. *Lewanika & Others Vs Chiluba [1998] Z.R. 79;*
9. *Walusiku Lisulo Vs Patricia Lisulo [1998] Z.R. 75;*
10. *Jamas Milling Company Limited Vs Imex International (Pty) Limited (2002) Z.R. 79;*
11. *BASF South Africa (Proprietary) Limited Vs Agrifocus Limited 2018/HPC/0419;*
12. *Cargill Vs Bower (1878) 10 ChD502;*
13. *Edith Tshabalala Vs The Attorney-General S.C.Z. JUDGMENT NO. 17 OF 1999; and*
14. *Savenda Management Services Vs Stanbic Bank Zambia Limited Appeal No. 37 of 2017*

Legislation referred to:

1. Rules of the Supreme Court (White Book) 1999 Edition;
2. Anti-Corruption Act, No. 3 of 2012 of the Laws of Zambia; and
3. High Court Act Chapter 27 of the Laws of Zambia.

Other works referred to:

1. Antoine Christian Buyse, "Lost and Regained?" Leiden University, 2008;
2. Matibini P, *Zambian Civil Procedure: Commentary and Cases*, Volume 2; and
3. Halsbury's Laws of England, 4th Edition Volume 26.

1. INTRODUCTION

- 1.1 The Applicant, on 24th June, 2024, filed into Court *Inter Parte* Summons for Correction of Accidental Slip and/or omission in the Judgment dated 21st June, 2024, pursuant to **Order 20 Rule 11** of the **Rules of the Supreme Court of England (White Book), 1999 Edition**. The same was accompanied with Affidavit in Support and List of Authorities and Skeleton Arguments.

2. BACKGROUND

- 2.1 The Applicant had filed Originating Summons pursuant to **Sections 61, 58 and 87** of the **Ant-Corruption Act, No. 3 of 2012** on 31st January, 2024.
- 2.2 The Applicant's claims were as follows:
 1. *An Order setting aside the Warrant of Seizure placed by the Respondent on the Applicant's Account on grounds of arbitrariness and abuse of power;*
 2. *An Order that failure to serve a fresh Notice of Restriction by the Respondent on the Applicant following the expiration of nine (9) months of its initial*

lifespan rendered the Respondent's continued denial of the Applicant's access to his Account illegal;

3. An Order that the Respondent has no power or authority in matters relating to property transfer tax as such power are exclusively reserved for the Commissioner General of the Zambia Revenue Authority as per the Property Transfer Tax Act, as read together with the Income Tax Act;
4. Further or other relief that the Court may deem fit; and
5. Costs of and incidental hereto.

2.3 In the resultant Judgment dated 21st June, 2024, this Court found at J49 as follows:

"6.1 In view of the foregoing, we find that the failure by the Respondent to serve the fresh Restriction Notice on the Applicant renders the it null and void. Therefore, the Applicant's first issue raised succeeds.

6.2 We find that the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account was not done in bad faith, oppressive and an abuse of the Respondent's power and authority. Therefore, the Applicant's second issues raised fails.

6.3 We find that the Respondent has the power to investigate and prosecute offences under the Property Transfer Act. Therefore, the Applicant's third issue raised fails.

6.4 Each Party to bear its own costs.

6.5 Leave to appeal is granted.”

3. APPLICANT'S APPLICATION

- 3.1 The Affidavit in Support was deposed to by **JAMES KAYULA**, an Advocate in the employ of Messrs. Lewis Nathan Advocates seized with the conduct of the Matter herein on behalf of the Applicant.
- 3.2 The Deponent avowed that on 21st June, 2024, this Honourable Court delivered its Judgment in the Matter herein, which Judgment is on the Court's Record.
- 3.3 It was avowed that the Judgment did not state the rights and/or reliefs of the Applicant as regards access to his Bank Account in issue and proceeded to reproduce the Court's findings as submitted in 2.3 above.
- 3.4 The Deponent averred that the effect of the Court's findings especially under 6.1 is not clear as it does not state whether or not the Applicant has access to his Bank Account as the fresh Restriction Notice that was issued was declared null and void.
- 3.5 That save for declaring the fresh Restriction Notice null and void, the Judgment did not state the Applicant's reliefs for the period he was illegally denied access to his Bank Account and /or funds therein.
- 3.6 The Deponent averred that his understanding of the Judgment is that fresh Restriction Notice having been declared null and void, which Restriction Notice ran for six (6) months, the Judgment appears to grant the Applicant access to his Bank Account and/or funds therein as he

was illegally deprived of access to his Bank Account and/or funds therein.

- 3.7 Further, it was the Deponent's understanding that granting the Applicant access to his Account owing to the fact that he was illegally denied access thereto is an effective remedy of restoration of his rights which entails wiping out all the consequences of the illegal act and re-establishing the situation which would have existed if the illegality by the Respondent had not been committed.
- 3.8 The Deponent avowed that this Court has the power to determine this Application.
- 3.9 In the Skeleton Arguments filed of even date, Counsel submitted that this Application is brought pursuant to **Order 20 Rule 11 of the Rules of the Supreme Court of England (White Book) 1999 Edition** (RSC) which empowers this Court to correct clerical mistakes, or errors rising from accidental slip or omission.
- 3.10 Counsel, in further establishing this Court's Jurisdiction to hear the Application, cited the case of **Trinity Engineering (PVT) Limited Vs Zambia National Commercial Bank Limited 1995-1997** ⁽¹⁾, wherein the Supreme Court stated that this Court has power, on motion or summons, to correct any accidental slip or omission in expressing its manifest intention.
- 3.11 Counsel submitted that this Court made three findings at J49 of the Judgment but of significance to this Application are two being:

"In view of the foregoing, we find that the failure by the Respondent to serve the fresh Restriction Notice

on the Applicant renders the it null and void. Therefore, the Applicant's first issue raised succeeds.

We find that the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account was not done in bad faith, oppressive and an abuse of the Respondent's power and authority. Therefore, the Applicant's second issues raised fails."

- 3.12 It was Counsel's submission that the Court has not gone further to address the reliefs, as well as Orders to the Parties. That it is this omission by this Court that makes the Applicant unclear as to the effect of these findings on whether the Applicant has been granted access to the restricted Account.
- 3.13 It was Counsel's further submission that the finding seems to suggest that the thoughts of the Court were not complete when it states '*In view of the foregoing, we find the failure by the Respondent to serve the fresh restriction notice on the Applicant renders the it null and void.*' That the highlighted part gives the impression that the Court either intended to say something more than the Record graces or it is a mere typo.
- 3.14 Counsel submitted the finding of the Supreme Court in the case of **Zambia Telecommunication Company Limited Vs Aaron Mweenge Mulwanda & Another** ⁽²⁾ and contended that they were of the view that this Judgment does not only omit to pronounce itself on the reliefs of the Parties, but also has no Orders. That it is these two omissions that makes their definitive appreciation of the

Judgment, whether the Applicant has been granted access to his restricted Account, difficult.

3.15 Counsel submitted that the position taken, on account that this Court pronounced that the fresh Notice is null and void for want of service, is that his Client, the Applicant, is entitled to have access to his Account because his denial to access his Account by the Respondent notwithstanding its failure to serve the Restriction Notice on him, was illegal and a violation of his right. It was argued that the remedy for this clear violation of the Applicant's right to property is reparation, whose primary form is restitution.

3.16 Counsel referred this Court to **Antoine Buyse**, in the Article "**Lost and Regained?**", which states that the deepest desire of any person whose rights have been violated is to turn back the clock. It was submitted that the Author further asserts that the primary goal of reparation is thus to turn back the time as if no harm was done; the reparation functions as a kind of magic wand. That this entails to re-establish the situation which existed before the wrongful act was committed. Further that the Author posits that vindication of ones violated right must wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.

3.17 It was Counsel's submission that the above is his interpretation as to the effect of the Court's finding that the fresh Restriction Notice was null and void for want of service; that this finding is meant to re-establish the

situation which would have existed had this wrongful act not been committed, that is to say, the Applicant being able to access his Account.

3.18 Counsel's submission was that they are alive to the fact that, because the Judgment is silent on reliefs and the Orders, this Judgment lends itself to speculation in terms of its net effect on the right of the Applicant.

3.19 In conclusion, Counsel prayed that based on the foregoing, this Honourable Court corrects its omission in the Judgment with respect to reliefs and Orders.

4. THE RESPONDENT'S RESPONSE

4.1 The Respondent filed Affidavit in Opposition to the Affidavit in Support of *Inter Parte* Summons for Correction of Accidental Slip and/or Omission in the Judgment dated 21st June, 2024, on 13th August, 2024. The same was deposed to by **NAMWEZI CHISANGA CHIZALILA**, a Legal and Prosecutions Officer in the employ of the Respondent.

4.2 The Deponent avowed, having perused the Applicant's Affidavit in Support and the said Judgment of this Court delivered on 21st June, 2024, that the Applicant wrote to the Respondent on 21st June, 2024, ordering the Respondent to release to the Applicant's money which is in the Restricted Account on the basis that this Court found that failure by the Respondent to serve the Applicant the fresh Notice rendered the purported fresh Restriction Notice void. A copy of the letter was exhibited and marked "**NCC1**".

4.3 It was deposed that on the advice of Counsel with conduct, and verily believing the same to be true, that on 25th June,

2024, the Respondent replied to the letter dated 21st June, 2024, declining to release the money held in the Applicant's Account until such a time when the Warrant of Seizure was vacated. A copy of the Respondent's letter was exhibited and marked "**NCC2**".

- 4.4 The Deponent avowed that having read the Affidavit in Support, the Applicant has not pointed out the alleged accidental slip that needs to be corrected. That on the other hand, the Applicant has stated that the effect of Paragraph 6.1 of the Judgment of this Court is not clear as it does not state whether the Applicant can have access to his Bank Account.
- 4.5 It was deposed that further to the above, and having read the Originating Summons dated 31st January, 2024, the Applicant did not seek for this Court to pronounce itself on whether he could access his Bank Account or not in his Pleadings.
- 4.6 The Deponent avowed in addition that the Applicant did not claim for the reliefs relating to the period that he was lawfully denied access to his Bank Account or to the funds therein.
- 4.7 The Deponent averred that she also wished to state that this Honourable Court found that the Warrant of Seizure was not placed in bad faith, therefore, it is still in force and valid.
- 4.8 In the Skeleton Arguments filed of even date, Counsel gave a brief background to the Application in *casu* and submitted that the Respondent objects to the said Application on the basis that this Court pronounced itself

in the Judgment and the Applicant is seeking reliefs that were not sought after in his Originating Summons dated 31st January, 2024.

- 4.9 On the law relating to 'Slip Rule', Counsel quoted **Order 20 Rule 11** of the **RSC** and submitted, with emphasis, that the provision clearly stipulates that the slip rule is applicable only in cases where there is a clerical mistake or error arising from an accidental slip with the idea being to make the meaning clear.
- 4.10 Counsel contended that a perusal of the findings of this Court at page J49 of the Judgment is clear and demonstrates the intention of the Court which intention was purely communicated to the Parties. That the Judgment does not contain any clerical mistakes or error that require correcting by this Court as the Court evidently considered all the issues that were raised by the Parties in their respective supporting Affidavits and oral submissions.
- 4.11 Counsel submitted that it was their contention that the Applicant has clearly chosen to deliberately misinterpret the finding at J49 of the Judgment which is clear and spelled out in clear and unambiguous terms. That this position is evidenced in the letter dated 21st June, 2024, addressed to the Respondent where the Applicant stated as follows:

"For the avoidance of doubt, the Court has found that the failure by the Respondent to serve the Applicant with fresh notice, rendered the purported fresh restriction notice invalid and/or null and

void. In the circumstances, you are ordered to release the Applicant's money as per Judgment of the Court." (Emphasis theirs)

- 4.12 It was Counsel's humble submission that this Application for Correction of Accidental Slip/Omission by the Applicant is unnecessary and merely meant to waste this Honourable Court's time.
- 4.13 Counsel submitted that the Applicant has further submitted that the Judgment is not clear as it has not stated whether he has been granted access to use the funds in his restricted Account or not and furthermore, that this Honourable Court has not granted him any reliefs for the period that he was denied access to these funds.
- 4.14 Counsel for the Respondent submitted that the law is clear and there is a plethora of cases to this effect that you cannot plead for a relief that was not set out in the pleadings. It was argued that in *casu*, the Applicant cannot now claim for reliefs that he did not seek in his Originating Summons dated 31st January, 2024. That a perusal of the Originating Summons filed by the Applicant does not disclose an Order for access to use funds in the restricted Account as one of the reliefs or a relief for the period he was denied access to these funds.
- 4.15 Counsel submitted that pleadings are the backbone of any law suit; it is what the Parties have pleaded, proved and consequently the Courts decision is based on the grounds set out in the pleadings. Counsel contended that no relief based on any ground that was not properly set out in the pleadings can be granted by this Court.

4.16 Counsel referred us to the holding in the case of **Christopher Lubasi Mundia Vs Sentor Motors** ⁽³⁾ which was cited with approval in the case of **Mazoka and Others Vs Mwanawasa and Others** ⁽⁴⁾ and submitted that in applying the principles in the above cases to the case in *casu*, the Court is invited to first observe that the factual basis upon which the Applicant's Application is premised is actually non-existent. It was submitted that the Deponent of the Affidavit in Support of the Application has stated that his understanding of the Judgement is that it appears to grant the Applicant access to his Bank Account or the funds therein. Counsel contended that the one question that begs to be answered then is how can the Court grant the Applicant access to his Account or funds and a relief for the period he has not accessed the said funds which he did not claim for?

4.17 It was submitted that the Applicant is not satisfied with the Court's Judgment and is in effect using this Application to try and have the Court review its earlier decision which the Supreme Court in **Trinity Engineering (PVT) Limited Vs Zambia National Commercial Bank Limited (1995-1997)** ⁽¹⁾ stated was not permissible in an application under **Order 20 Rule 11** of the **RSC**.

4.18 Counsel argued that amending the Judgment to include an Order for the Applicant to access the funds in the restricted Account and a relief for the period he was denied access to the said funds would totally change the substance of the Judgment; it would be prejudicial to the

Respondent as it would be tantamount to allowing the Applicant to have a second bite at the cherry.

4.19 Counsel maintained that these reliefs were not pleaded by the Applicant neither was there any evidence led to this effect which was not objected to by the Respondent.

4.20 In conclusion, Counsel submitted that they strongly objected to this Application as the Applicant is trying to have a second bite at the cherry by sneaking in reliefs which were not specifically claimed in the Originating Summons and is using **Order 20 Rule 11** of the **RSC** as a disguise to do so.

4.21 That on the strength of the foregoing authorities, it was Counsel's prayer that this Court dismisses the Applicant's present Application for Correction of Accidental Slip and/or Omission in the Judgment dated 21st June, 2024 as the aforementioned Judgment is clear and does not require any corrections and further that the Applicant's Application is totally misconceived, unnecessary and derailing this Court and should be dismissed with all the contempt it deserves with costs.

5. APPLICANT'S REPLY

5.1 The Applicant filed an Affidavit in Reply to the Affidavit in Opposition on 21st August, 2024, and the same was sworn by **JAMES KAYULA** as above. The Affidavit largely repeated the averments in the Affidavit in Support and will not be repeated here save for the following below.

5.2 The Deponent averred that the Applicant did point the accidental slip that needs to be corrected being that the Judgment of 21st June, 2024, did not state the rights

and/or reliefs of the Applicant as regards access to his Bank Account in issue as the fresh Restriction Notice that was issued was declared null and void.

- 5.3 It was deposed that the Pleadings did clearly state that the Applicant was denied access to his Bank Account when he claimed for an Order that failure to serve a fresh Notice of the Restriction Notice by the Respondent on the Application following the expiration of nine (9) months of its initial lifespan rendered the Respondent's continued denial of the Applicant's access to his Account illegal. That the opposite is true that he needed access to his Bank Account. That in fact, the Affidavit in Support of the Originating Summons made a claim for access to the Applicant's Bank Account certain.
- 5.4 The Deponent avowed that in any case, the claim for '*Further or other relief that the Court may deem fit*' in the Originating Summons gives this Court a leeway and/or latitude to determine all issues and/or grant all incidental reliefs so that the matter is brought to finality without leaving any door open for conjecture.
- 5.5 In the Skeleton Arguments in Reply filed of even date, Counsel for the Applicant repeated his arguments submitted earlier save to state that the argument by the Respondent that the Applicant did not seek the relief to have access to his Bank Account in his Pleadings is a serious misconception of the whole action herein; that the relief is and/or was the backbone of the proceedings herein. That if the Applicant had access to his Bank

Account, the proceedings herein would not have been begun.

- 5.6 Counsel once again referred this Court to **Order 20 Rule 11** of the **RSC** and the holding of the Supreme Court in the case of **Zambia Telecommunication Company Limited Vs Aaron Mweenge Mulwanda & Another** ⁽²⁾ and reiterated that he was of the view that this Judgment does not only omit to pronounce itself on the reliefs of the Parties, but also has no Orders.
- 5.7 Counsel submitted that following this Courts finding that the fresh Notice is null and void for want of service, the Respondent violated the Applicant's rights which he must enjoy now based on this pronouncement.
- 5.8 Counsel went on to repeat his averment in the Affidavit in Reply with regards to the claim for '*Further or other relief that the Court may deem fit*'.
- 5.9 In conclusion, and based on the foregoing, Counsel implored this Court to correct the omission in the Judgment with respect to reliefs and Orders. It was submitted that the Applicant was denied his right, that is, access to his Bank Account, and the Court through the Judgment herein has stated that it was illegal, but no recompense and/or relief for the illegality during the time in issue has been pronounced, thus this Application.

6. HEARING

- 6.1 The Matter came up for Hearing on 24th July, 2024, and Counsel for both the Applicant and the Respondent agreed and Orders were issued accordingly that the Respondent could proceed to file its Opposition, and the Applicant was

at liberty to Reply. Further that the Ruling of the Court would be delivered and placed in Counsel's Pigeon Holes without the need for a Hearing.

7. CONSIDERATION AND DECISION OF THE COURT

7.1 We are grateful to Counsel for the Parties for their submissions in Support, in Opposition and in Reply to the Applicant's *Inter Parte* Summons for Correction of Accidental Slip and/or Omission in the Judgment dated 21st June, 2024.

7.2 **Order 20 Rule 11** of the **RSC** gives this Court jurisdiction to hear the Application and anchors the Respondent's Application.

7.3 Pleadings, such as the Originating Notice filed by the Applicant herein, are defined in **Blacks Law Dictionary** at pages 1394 and 1395 respectively as:

"1. A formal document in which a party to a legal proceeding (esp. civil lawsuit) sets forth or responds to allegations, claims, denials, or defences."

"2. A system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions."

7.4 In the High Court case of **Christopher Lubasi Mundia Vs Sentor Motors Limited** ⁽³⁾ the function of pleadings was held to be as follows:

"The function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in

order to determine the matters in dispute between the parties.”

7.5 Perusal of the Applicant's Originating Summons filed on 21st January, 2024, accompanied with Affidavit in Support and List of Authorities and Skeleton Arguments of even date, reveals the claims and reliefs prayed for as shown at 2.2 above.

7.6 It must be emphasised here that Parties to a matter, as of right, may amend their Pleadings to reflect their desired claims and reliefs sought before close of the proceedings. **Order XVIII Rule 1** of the **High Court Rules** states as follows:

“The Court or a Judge may, at any stage of the proceedings, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just.” (Emphasis ours)

7.7 The Applicant in *casu*, made no such application before this Court prior to the close of proceedings. The case of **Christopher Lubasi Mundia**, *supra*, is also clear on the

Court's position once Pleadings are closed and guides as follows:

“Once the pleadings have been closed, the parties thereto are bound by their pleadings and the Court has to take them as such.”

7.8 The above case further referred to the case of **London Passenger Transport Board Vs Moscrop** ⁽⁵⁾ wherein Lord Russell of Killowen at p. 347 stated as follows:

“Any departure from the cause of action alleged, or the relief claimed in the pleadings should be preceded, or at all events, accompanied, by the relevant amendments, so that the exact cause of action alleged and relief claimed shall form part of the Court's record, and be capable of being referred to thereafter should necessity arise. Pleadings should not be 'deemed to be amended' or 'treated as amended.' They should be amended in fact.”

7.9 With no application made by the Applicant herein to amend their Pleadings, and with the close of the same, we were bound by them and adjudged based on the reliefs and claims therein.

7.10 The Applicant has now filed Summons for Correction of Accidental Slip and/or Omission in this Court's Judgment dated 21st June, 2024. The Application is made pursuant to **Order 20 Rule 11** of the **RSC** which states as follows:

“Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.”

7.11 Matibini P, learned author of **Zambian Civil Procedure: Commentary and Cases, Volume 2** elucidates at page 1147 on the issue of correction of judgments as follows:

“Thus, the Supreme Court was satisfied that a High Court Judge has power under Order 20, rule 11, and also inherent in the judge, to correct clerical errors or accidental omissions in a judgment or order or to vary the judgment or order so as to give effect to his meaning and intention It needs to be stressed however that the operation of the slip rule is limited to accidental slips or omissions, such as clarification of an ambiguity in the text of the judgment, a typographic error, an arithmetic error or generally to correct a patent error.”

(Emphasis ours)

7.12 The learned authors of **Halsbury's Laws of England**, at Paragraph 557 provide a list of circumstances under which clerical or accidental mistakes can be corrected. They state that there is power, both under the Rules of Court and inherent in the Judge or Master who gave or made the judgment or order, to correct any clerical mistake in it or some error arising from it from accidental slip or omission, or to vary the judgment or order to give effect to his meaning or intention. As elucidated by Matibini J. above, and according to the authors, the power applies in cases of mistakes or accidental slips made by officers of the court, such as a miscalculation of interest, or a mistake in a date, or accidental omission from a bill of costs.

7.13 The Applicant in this matter has referred to a typographical error in the Judgement under Paragraph 6.1. The impugned Paragraph reads as follows:

***“6.1 In view of the foregoing, we find that the failure by the Respondent to serve the fresh Restriction Notice on the Applicant renders the it null and void. Therefore, the Applicant’s first issue raised succeeds.* (Emphasis ours)**

7.14 Counsel for the Applicant submits that the above finding seems to suggest that the thoughts of the Court were not complete; that the Court either intended to say something more than the Record grants or that it is a mere typo.

7.15 It is our considered view that, in as much as typographical errors are regrettable, the underlined typographical error does not present an ambiguity such that the meaning and intent of the Court’s finding above can be misconstrued or viewed as vague and unclear. It is our considered view that the above typographical error cannot fall within the meaning of a ‘clarification of an ambiguity in the text of the judgment’ as the intention and meaning of the Court is clear.

7.16 What is evident is that the Applicant’s real issue with Paragraph 6.1 of our Judgment, according to their submissions, is that it ‘is not clear as it does not state whether or not the Applicant has access to his Bank Account as the fresh Restriction Notice that was issued was declared null and void’.

7.17 This is confirmed in the Applicant’s Affidavit in Reply where the Applicant avers that the accidental slip that

needs to be corrected is that the Judgment of 21st June, 2024, did not state the rights and/or reliefs of the Applicant as regards access to his Bank Account in issue as the fresh Restriction Notice that was issued was declared null and void.

7.18 The Applicant further contends that the claim for *‘Further or other relief that the Court may deem fit’* in the Originating Summons gives this Court a leeway and/or latitude to determine all issues and/or grant all incidental reliefs so that the matter is brought to finality without leaving any door open for conjecture.

7.19 We are alive to the holding in **Trinity Engineering (PVT) Limited Vs Zambia National Commercial Bank Limited (1995-1997)** ⁽¹⁾ wherein Ngulube, J. as he was then, stated as follows:

“That the slip rule was meant for the Court to correct clerical errors in a judgment arising from accidental slip or omissions. In the present case the applicant was effectively seeking the reviewing and setting aside of the previous judgment which was not permissible.”

7.20 It is our considered view that based on the submissions, the Applicant’s Application goes beyond the correction of accidental slip and/or omission in this Court’s Judgment dated 21st June, 2024, as envisioned by **Order 20 Rule 11** of the **RSC**. What the Applicant is actually seeking by way of these Summons is a review of the said Judgement and, as rightly pointed out by the Respondent, a second bite at the cherry with no room for objection.

7.21 There is a plethora of cases that speak to whether a trial Court can amend, rehear, review alter or vary its Judgment. One of which is the case of **Mayo Transport Vs United Dominions Corporation Limited** ⁽⁶⁾ wherein it was held that:

“The general rule as to the amendment and setting aside of Judgments or orders after a Judgment or order has been drawn up was as follows:

"Except by way of appeal, no Court, Judge or Master has power to rehear, review, alter or vary any Judgment or Order after it has been or drawn up, respectively, either in application made in the original action or matter, or in fresh action brought to review such Judgment or Order. The object of this rule is to bring litigation to a finality but it is subject to a number of exceptions.”

7.22 The High Court case of **Mayo Transport**, *supra*, which followed the case of **Thynne Vs Thynne** ⁽⁷⁾ set out a number of exceptions to the general rule, as did the Supreme Court cases of **Lewanika & Others Vs Chiluba** ⁽⁸⁾, **Walusiku Lisulo Vs Patricia Lisulo** ⁽⁹⁾ and **Jamas Milling Company Limited Vs Imex International (Pty) Limited** ⁽¹⁰⁾ wherein guidance was given when a trial Court can review its judgment or decision.

7.23 This Application, having been made pursuant to **Order 20 Rule 11** of the **RSC**, which strictly allows for amendments of judgments due to clerical mistakes, errors arising from any accidental slips or omissions cannot extend to stating the rights and/or reliefs of the Applicant or to make Orders

not pleaded for and further, as guided in a plethora of cases cited above, this Court is precluded from rehearing, reviewing, altering or varying any Judgment or Order after it has been or drawn up except by way of appeal and in the manner prescribed in the cases at 7.22 above.

7.24 It is our further considered view that following our Judgment dated 21st June, 2024, we are *funtus officio*.

7.25 We are further buttressed by the High Court case of **BASF South Africa (Proprietary) Limited Vs Agrifocus Limited** ⁽¹¹⁾ wherein it was stated as follows:

“It was submitted that generally the court will become functus officio upon delivery of a judgment in a given cause, thereby automatically bringing the jurisdiction of the court to an end. However, provisions and precedents do exist for situations where the same court may be called upon to correct or clarify the contents of a judgment. The purpose of this power is in no way a means to change the outcome of the matter, its sole purpose being to give effect to the meaning and intention of the court in passing judgment. It was further submitted that the authority the court has to exercise its power in such a manner is referred to as the "Slip Rule", which is provided for by Order 20, rule 11 of the White Book... It was submitted that what will immediately catch the Court's attention is that the Order refers to clerical mistakes or some form of slip or omission.”

7.26 Further to the above, and for clarity's sake, the Applicant's claim for '*Further or other reliefs that the Court may deem fit*' in the context of their Application herein is misconstrued and based on the mistaken view of the effect of the prayer for alternative relief.

7.27 In the English case of **Cargill Vs Bower** ⁽¹²⁾ at page 508, Fry, LJ pointed out that the prayer for alternative relief is limited by the statement of fact in the declaration and by the terms of the express claim, and that a plaintiff cannot get, under the prayer for alternative relief, anything that is inconsistent with those two things.

7.28 In the Supreme Court case of **Edith Tshabalala Vs The Attorney-General** ⁽¹³⁾ it was stated that:

"the High Court has jurisdiction under Section 13 of the High Court Act, Cap. 27 to offer alternative relief or remedies where justified by the pleadings and the evidence."

7.29 Further guidance was given in the Supreme Court case of **Savenda Management Services Vs Stanbic Bank Zambia Limited** ⁽¹⁴⁾ as follows:

"This reasoning by the Court of Appeal ignores the fact that, in exercising the powers vested upon it by section 13, the High Court must not, of its own volition, seek out authorities that create new reliefs or remedies for one party at the expense of another. The power which Section 13 of the High Court Act creates is limited to that of the Court investigating if alternative remedies and reliefs are available from the pleadings and evidence deployed

before it as opposed to suggesting, from a vacuum, fresh remedies or reliefs. The actions by Learned High Court Judge effectively amounted to his stepping into the arena of the dispute to the disadvantage of the Respondent, which we find to be a misdirection on his part deserving of intervention by the Court of Appeal. Ours is an adversarial court system which shackles the judge to the pleadings and evidence presented before him. He is at large and by virtue of section 13 to grant any relief and remedies coming out of such pleadings and evidence, whether they are specifically asked for or not, but he is not permitted to introduce a remedy or relief from facts and circumstances of his own creation and outside the pleadings and evidence.”

7.30 It is therefore our considered view based on the foregoing findings that this Court cannot now and could not then offer further or other relief or remedies as these are not justified by the Pleadings and the evidence on which the Judgment dated 21st June, 2024, is based on. A prayer for further and other reliefs that the court may deem fit does not enlarge in any way the terms of the express claim as contained in the Pleadings.

8. CONCLUSION

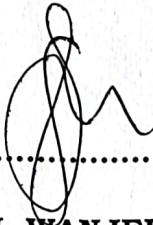
8.1 In view of the foregoing, we find that the Applicant's *Inter Parte* Summons for Correction of Accidental Slip and/or omission in the Judgment dated 21st June, 2024, pursuant to **Order 20 Rule 11** of the **Rules of the**

Supreme Court of England (White Book), 1999 Edition
is misconstrued and misplaced and therefore, fails.

8.2 Costs are for the Respondent to be taxed in default of agreement.

SIGNED, SEALED AND DELIVERED AT LUSAKA

THIS 30TH DAY OF OCTOBER, 2024.



.....
S. M. WANJELANI
HIGH COURT JUDGE



.....
P. K. YANGAILO
HIGH COURT JUDGE



.....
A. MALATA-ONONUJU
HIGH COURT JUDGE