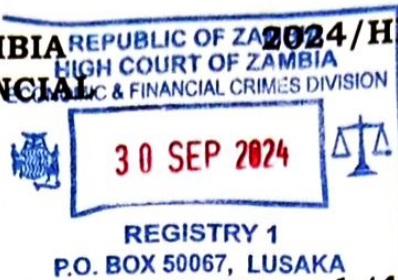


**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES COURT HOLDEN AT
LUSAKA**

(Civil Jurisdiction)



**IN THE MATTER OF: SECTION 58 (1), (3) and (4) OF THE
ANTI CORRUPTION ACT NO. 3 OF 2012
IN THE MATTER OF: SECTION 59 (2) and (3) OF THE ANTI
CORRUPTION ACT NO. 3 OF 2012.
IN THE MATTER OF: SECTION 86 OF THE ANTI
CORRUPTION ACT NO. 3 OF 2012
IN THE MATTER OF: SEIZURE OF ACCOUNT NUMBER
5727652500219 HELD AT ZAMBIA
NATIONAL COMMERCIAL BANK
(ZANACO) PLC**

BETWEEN:

**SAVENDA SYSTEMS LIMITED
AND
THE ANTI CORRUPTION COMMISSION
MILIMO NG'ANDU**

APPLICANT

**1ST RESPONDENT
2ND RESPONDENT**

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, P. K.
YANGAILO AND I. M. MABBOLOBOLO IN CHAMBERS ON THE
30TH DAY OF SEPTEMBER, 2024.**

For the Applicant: Mr. P. G. Katupisha, Messrs Milner & Paul
Legal Practitioners
Ms. T. Ponya, Messrs Milner & Paul Legal
Pratitioners
For the 1st Respondent: Mr. K. Lukama, Legal Prosecutions Officer
– Anti Corruption Commission
Mrs Dorah B. Tembo, Senior Legal Officer
– Anti Corruption Commission
For the 2nd Respondent: Mr. M. Ng'andu – In Person

RULING ON JURISDICTION

**MABBOLOBOLO, I. M. J, DELIVERED THE RULING OF THE
COURT.**

A. CASES REFERRED TO:

1. *Ronald Kaoma Chitotela v Anti- Corruption and 3 Others* 2022/HPEF/02
2. *Godfrey Miyanda v The High Court* (1984) Z.R. 62
3. *Antonio Ventriglia and Another v Finsbury Investments Limited* Appeal No. 02/2019
4. *Owners of the Motor Vessel Lillians v Caltex Oil (Kenya) Limited* (1989) KLR 19
5. *JCN Holdings Limited v Development of Zambia* (2013) ZR 299
6. *Vanjelatos and Another v Metro Investments Limited and 3 Others* SCZ Ruling No. 21 of 2013
7. *Zambia National Holdings Limited and United National Independence Party v The Attorney General* 91993/4) ZR 115
8. *Cavmont Bank Limited v John Mwansa Kalinde and 40 Others* Appeal No. 309/2021 (Unreported)
9. *Chikuta v Chipata Rural Council* (1974) ZR 241 SC
10. *Anti- Corruption Commission v Bowman Chilosha Lusambo* 92022) ZM HC, 12 9Unreported)
11. *Godfrey Shamanena v Anti – Corruption Commission* (2024) HPEF/003
12. *Crossland Mutinta and Others v Donovan Chipanda* SJ No. 53/2018
13. 14. *Lloyd Chembo v The Attorney General* CCZ SJ No. 15 of 2018

B. LEGISLATION REFERRED TO:

1. *The Constitution of Zambia Chapter 1 of the Laws of Zambia*
2. *The Anti-Corruption Act No. 3 of 2012*
3. *High Court Act Chapter 27 of the Laws of Zambia*
4. *Statutory Instrument No. 5 of 2022 Establishing the Economic and Financial Crimes Court*

1.0. INTRODUCTION AND BACKGROUND

- 1.1. This is a Ruling on the Jurisdiction of the Court to hear and determine this Matter anchored on the Warrant of Seizure issued by the Subordinate Court.

- 1.2. The Ruling comes at the back drop of the Court's decision to proceed *Suo moto* (on our own motion) when the Matter came up on 20th August, 2024.
- 1.3. By way of background, this Matter was commenced by the Applicant via Originating Summons and accompanying Affidavit both filed into Court on 3rd May, 2024. The Applicant seeks the following reliefs:
 - 1.3.1. *A Declaration that the Warrant of Seizure seizing the Applicant's United States Dollars Project Bank Account No. 5727652500219 held at Zambia National Commercial Bank is illegal and null and void ab initio for fraudulent misrepresentation.*
 - 1.3.2. *An Order for immediate lifting of the said Warrant of Seizure and allowing the Applicant unrestricted access to Account No. 572765500219.*
 - 1.3.3. *Damages in the sum of US\$4,946,887.04 arising from the illegal seizure of the Applicant's Account.*
 - 1.3.4. *Further and in the alternative an Order for damages to be assessed by the Registrar arising from the illegal Seizure of the Applicant's Bank Account*
 - 1.3.5. *Exemplary damages*
 - 1.3.5. *Any other reliefs the Court may deem fit*
 - 1.3.7. *Interests*
 - 1.3.8. *Costs of and incidental to these proceedings.*
- 1.4. The Applicant did on 19th June, 2024, file Summons to Set Down Action for Judgment against the Respondents in Default of Appearance and Defence or Service of Defence. The Summons were accompanied by an Affidavit in Support and Skeleton Arguments.

- 1.5. On 28th June, 2024, the 2nd Interested Party filed Summons for Misjoinder of Parties pursuant to **Order XIV Rule 5 (2) of the High Court Rules**.
- 1.6. On the same date referred to above, both the 1st and 2nd Respondents filed their respective Affidavits in Opposition to the Applicant's Summons to Set Down Action for Judgment Against the Respondents in Default of Appearance or Service of Defence.
- 1.7. By Notice of hearing issued out this Court, both Applications were scheduled for hearing on 31st July, 2024. On the return date, the Applicant withdrew its Application for Setting Down Action for Judgment in Default and there being no objection to the withdrawal, we granted the Application.
- 1.8. We thereafter proceeded to hear the 2nd Respondent's Application for Misjoinder based on the documents on the file and the Parties' respective oral augmentations after which we reserved our Ruling for Misjoinder for 27th August, 2024.
- 1.9. On 12th August, 2024, we issued a Notice of hearing to the Parties appointing 20th August, 2024, as the return date. On the return date, we informed the Parties that we had set this hearing ahead of delivery of our Ruling for Misjoinder because having carefully considered the reliefs being sought by the Applicant, we had elected to proceed *Suo moto* and invited the parties to address us through written submissions on our jurisdiction to hear and determine the Matter in view of the basis of the reliefs sought being the Warrant Seizure issued by the Subordinate Court. We directed that the Parties file their respective Submissions by 6th September, 2024.

2.0. SKELETON ARGUMENTS

- 2.1. In the Skeleton Arguments filed by the 1st Respondent on 4th September, 2024, a brief background was set out before it was

2.0. SKELETON ARGUMENTS

- 2.1. In the Skeleton Arguments filed by the 1st Respondent on 4th September, 2024, a brief background was set out before it was submitted that the Warrant of Seizure being impugned was issued by the Subordinate Court of the First Class after the 2nd Respondent swore an Affidavit wherein he deposed, *inter alia*, that the 1st Respondent received a Complaint alleging that on a date unknown but between 1st January, 2020 and 31st August, 2022, Savenda Systems Limited was in possession of funds suspected to be proceeds of crime and that investigations had revealed that Savenda Group of Companies, the parent company of Savenda System Limited fraudulently obtained contracts from the Government of the Republic of Zambia.
- 2.2. It was stated that the Warrant of Seizure in issue was never at any point challenged in the Subordinate Court. That there was no Application before the issuing Court with regards the legality of the said Warrant of Seizure. Further that there was no Application for Review or otherwise of the Seizure Notice before the Subordinate Court.
- 2.3. The submission is that the Warrant of Seizure is a Court Order which is and remains in force until the issuing Court cancels or alters it. That the allegations being made by the Applicant herein are almost impossible to fully determine in the absence of any Ruling by the Subordinate Court on the reliefs being sought by the Applicant. Further that, it would have been easier for this Court if this matter came by way of Appeal. That if that was the case, this Court would have

considered the reasons advanced by the Subordinate Court on whether or not there was fraud or misrepresentation of facts when granting the Warrant of Seizure.

- 2.4. A related submission is that this Court does not have jurisdiction to hear this matter. That this Court has no power to delve into the issue of whether there was reasonable cause to issue the Warrant of Seizure as that is a matter to be determined by the Court before which the Warrant of Seizure was obtained, that is the Subordinate Court.
- 2.5. The 1st Respondent submitted that if a matter is not properly before Court, the Court lacks jurisdiction to hear, determine or indeed make any pronouncement on it. Arguing further, it was stated that this Court was faced with a similar issue in the case of **Ronald Kaoma Chitotela v Anti - Corruption and 3 Others**¹ when it declined to delve into a matter before the Subordinate Court.
- 2.6. For the definition of '*Jurisdiction*,' the case of **Godfrey Miyanda v The High Court**² was drawn to our attention. Additionally, the case of **Antonio Ventriglia and Another v Finsbury Investments Limited**³ was adverted to where the case of **Owners of the Motor Vessel 'Lillians' v Caltex Oil (Kenya) Limited**⁴ was cited with approval for the position that Jurisdiction is everything (and that) without it, a Court has no power to make one more step.
- 2.7. Further that the Supreme Court went further in the same case to state that where the Court takes it upon itself to exercise a jurisdiction which it does not possess. Its decision amounts to nothing. The rider is that this observation is

precisely what the Supreme Court said in the case of **JNC Holdings Limited v Development Bank of Zambia**⁵.

- 2.8. According to the 1st Respondent, a perusal of the other reliefs reveals that the same stem from the first impugned relief. The submission therefore, is that if the Court finds that it indeed lacks jurisdiction, to hear this matter based on the first relief, then the rest of the reliefs become *otiose*.
- 2.9. It was submitted in closing on behalf of the 1st Respondent that it is not entirely correct that the mode of commencement of any action largely depends on the reliefs sought or the Party's choice of Court before which he intends to bring his cause. The reiteration is that where any matter which is supposed to be heard by another Court is brought to this Court by any means when it should not have been brought in the first place, this Court has no jurisdiction to grant remedies sought.
- 2.10. On his part, the 2nd Respondent filed his Skeleton Arguments on 5th September, 2024. By and large, the 2nd Respondent repeated the arguments and authorities advanced by the 1st Respondent. To avoid monotony, we shall not repeat the similar arguments and the authorities cited.
- 2.11. The 2nd Respondent in addition to the authorities cited by the 1st Respondent adverted to the case of **Vanjelatos and Another v Metro Investments Limited and 3 Others**⁶ for the position that the absence of jurisdiction nullifies whatever decision follows from such proceedings and that the exercise of power in the absence of jurisdiction amounts to an abrogation of confidence reposed in the Courts by people and contravention of the **Constitution** and other laws.

- 2.12. It was submitted in conclusion by the 2nd Respondent that the other reliefs are based on the first one without which they have no legs to stand on and that the said reliefs face the same fate as they are not properly before Court.
- 2.13. The Applicant's Skeleton Arguments on our jurisdiction were filed on 6th September, 2024. On the mode of commencement, the Applicant adverted to **Section 58 of the Anti - Corruption Act No. 3 of 2012**. The Submission is that **Sections 60 (5), 6, 7 and 61 (7)** that specifically state what an aggrieved person may do, **Section 58** does not, but **Section 86** in Part VIII provides the mode of commencement for any application under the Act. It was therefore the Applicant's position that the mode commencement of this matter before us is correct and in accordance with the Law as stated above.
- 2.14. The Applicant drew our attention on our jurisdiction to **Statutory Instrument No. 5 of 2022** establishing the **Economic and Financial Crime Court** and **Article 134 (a) and (c) of the Constitution of Zambia** for the position that the High Court has, subject to **Article 28**, unlimited and original jurisdiction in Civil and Criminal matters and also jurisdiction to review decisions as prescribed.
- 2.15. According to the Applicant, this therefore means that that this Court has jurisdiction to hear and determine all matters that can be heard in the General List of the High Court because the Constitution of Zambia, under **Article 134** clothes it with unlimited and original jurisdiction and the nature of the offence being investigated falls under Economic and Financial Crimes Jurisdiction which is an added

jurisdiction as the Affidavits of both the 1st and 2nd Respondents show. Further, that the Affidavit under scrutiny which the Magistrate relied upon shows that the Account in issue was seized for alleged economic and financial crimes allegations which suggest forfeiture. Additionally, that this matter is brought pursuant to **Sections 86 and 58 (1) of the Anti – Corruption Act No. 3 of 201** in relation to the Warrant of Seizure obtained and **the Economic and Financial Crimes (Division of Court) [Amendment] Order, 2024** on the meaning assigned to ‘Corruption’.

2.16. Our attention was drawn to the case of **Godfrey Miyanda v The High Court**⁷ on the definition of the term ‘jurisdiction’. The case of **Zambia National Holdings Limited v United National Independence Party v The Attorney General**⁸ was also cited for the position that the High Court has unlimited jurisdiction in that no cause is beyond its competence and authority but is not exempt from adjudicating in accordance with the law and complying with procedural requirements and substantive limitations such as mandatory sentences and types of choice of relief.

2.17. According to the Applicant, with the above authorities, this Court has unrestricted jurisdiction except that specifically enacted by particular statutes. **Section 13 of the High Court** was also referred to us as being expansive on this Court’s jurisdiction.

2.18. It was contended that the combination of the jurisdiction under **Article 134 of the Constitution of Zambia** and **the Economic and Financial Crimes (Division of Court) Order**

2022 give this Court an enlarged and unlimited Jurisdiction to hear and determine this action.

2.19. The Applicant drew our attention to the case of **Cavmont Bank Limited v John Mwansa Kalinde and 40 Others**⁹ which is a matter that dealt with treatment of employees in a similar way as Unionized employees bordering on Industrial Relations issues but did not make the case purely an Industrial Relations one as it could be competently dealt with under the General List of the High Court.

2.20. The Supreme Court case of **Chikuta v Chipata Rural Council**¹⁰ was cited for the position that there is no case in the High Court where there is a choice between commencing an action by Writ of Summons or by an Originating Summons and that where any matter is brought to the High Court by means of an Originating Summons when it should have been commenced by Writ, the Court has no jurisdiction to make any declarations.

2.21. The related submission is that the case in *casu* was commenced by Originating Summons as provided for by **Section 86 of the Anti -Corruption Act No. 3 of 2012, of the Laws of Zambia** and therefore it is properly before this Court. That even assuming that this Court can not pronounce itself on all the reliefs being sought, that alone can not defeat the ends of justice in this matter with a dismissal as this Court can refer the matter to the General List for determination.

2.22. According to the Applicant, he had earlier commenced an action against the 1st Respondent herein under cause No. 2023/HPEF/28 on Restrictions placed on the Applicant's

operational Account, a subject of these proceedings. That in that case, one of the main reliefs was not granted for the reason that the Applicant herein had failed to prove the loss claimed.

2.23. Building on the preceding paragraph, it was contended that, that particular relief is one of the reliefs in the instant case but that is not to say this Court is *functus officio* as this matter is not a retrial of the same subject matter. Reliance was placed on the cases of **Anti- Corruption Commission v Bowman Chilosha Lusambo**¹¹ and **Godfrey Shamanena v Anti – Corruption Commission**¹² that the two investigative tools are different and therefore the actions therein are different. That one was to challenge the irregularity of the restrictions and the other is to challenge the manner the Warrant of Seizure was obtained and never at all the power to do so in good faith.

2.24. The concluding submission on behalf of the Applicant is that in the same vein, this action can not be said to *be res judicata pro veritate accipitor* as there has been no decision on the Parties regarding the Warrant of Seizure. That this is *res nova* and that the reference to the first and second Seizure in this action is for historical background and demonstrates how the Applicant has been affected in terms of access to its funds and never to suggest that this matter has been determined on both the restrictions and the Warrant of Seizure. That never the less, the said Restrictions were declared null and void *ab initio*.

3.0. CONSIDERATION AND DECISION OF THE COURT

- 3.1. As intimated in the introduction, we in the exercise of judicial powers, invoked our inherent jurisdiction and proceeded *Suo moto* by inviting the Parties to address us on our jurisdiction to hear and determine this Matter. Our decision was informed following our careful consideration of the reliefs that the Applicant herein is seeking.
- 3.2. We are fortified that our decision to move ourselves in the manner done is in keeping with what the Supreme Court restated in the case of **Crossland Mutinta and Others v Donovan Chipanda**¹³ that a jurisdictional issue can be raised at any stage and also that a Court can consider such an issue even if it is not raised earlier by a Party. In this Matter the issue involved jurisdiction of a Court to adjudicate upon a matter and the Court essentially concluded that since jurisdiction affects the propriety of the Court's decision, it can be considered at any stage of the proceedings.
- 3.3. Having looked at the reliefs sought by the Applicant herein, it is evident that they stem from a Warrant of Seizure taken at Lusaka on the 15th day of November, 2023 by Milimo Ng'andu, the 2nd Respondent herein and sworn before the Honorable Magistrate in the Subordinate of the First Class Holden at Lusaka seizing the Applicant's United States Project Bank Account No. 5727652500219 domiciled at Zambia National Commercial Bank.
- 3.4. The Applicant contends that the Warrant of Seizure is illegal and null and void *ab initio* for fraudulent misrepresentation. The 1st and 2nd Respondents' position on the other hand is that that the Warrant of Seizure in issue has never at any

point been challenged in the Subordinate Court as regards its legality and further that there was no application for Review or otherwise of the Seizure Notice before the Subordinate Court. Further that a Warrant of Seizure is a Court Order which is and remains in force until the issuing Court cancels or alters it.

3.5. It is trite that a Warrant of Seizure is a Court document which has force of law. Since it is a Court document, it remains in force until it is set aside, cancelled or altered as may be deemed fit by the issuing Court. This is so no matter how the Court Order was obtained.

3.6 The Applicant has contended that this Court has jurisdiction to hear and determine this case pursuant to the **Economic and Financial Crimes (Division of Court) Order 2022, Article 134 of the Constitution of Zambia, Section 86 of the Anti – Corruption Act No. 3 of 2012 and Section 13 of the High Court Act Chapter 27 of the Laws of Zambia**. The 1st and 2nd Respondent's argument on the other hand is this Court does not have jurisdiction to hear this matter as it does not have power to delve into the issue of whether there was reasonable cause to issue the Warrant of Seizure as this is a matter to be determined by the Court before which it was issued.

3.7. We had occasion to determine a similar matter in the case of **Ronald Kaoma Chitotela v Anti -Corruption Commission of Zambia and 3 Others**¹ where we held, among others, at Page J59 Paragraph 11.9 that:

“In any event, this Court can not delve into a matter regarding whether there was reasonable basis for

issuance of the Warrant of Seizure, as this is before the Subordinate Court. Ample guidance has been given on this issue by the Constitutional Court including in the case of Lloyd Chembo v The Attorney General¹³ on how Courts ought to operate in relation to a matter that is before another Court as they stated that;

“There is comity between Courts. This court worked hard in hand with other Courts so that matters between it and other Courts are heard and determined in an orderly manner.”

Therefore, this Court can not comment on or determine a matter that is before another Court and not properly raised before us”

3.8. We agree with the Applicant’s position regarding the expansive jurisdiction conferred on the High Court by the **Constitution** and other Statutes in terms of original and unlimited jurisdiction to hear and determine any matters that come before us. That notwithstanding, we are alive to the fact that unlimited jurisdiction of the High Court does not mean that the High Court’s jurisdiction is limitless. We find guidance for our position in the case of **Zambia National Holdings Limited and United National Independence Party v The Attorney General** usefully cited by the Applicant where Ngulube CJ, in delivering the Judgment of the Court held that:

“The High Court has unlimited jurisdiction in that no cause is beyond its competence and authority but it is not exempt from adjudicating in

accordance with law and complying with procedural requirements and substantive limitations such as mandatory sentences and types or choice of relief." (Emphasis ours)

- 3.9. In the case of **Godfrey Miyanda v The High Court**² cited by both the Applicant and the 1st Respondent, the Supreme Court defined Jurisdiction when it stated that:

"The term jurisdiction should first be understood. In one sense, it is the authority which a Court has to decide matter that are litigated before it, in another sense, it is the authority which a Court has to take cognizance of matter presented in a formal way for its decision. The limits of authority of each of the Courts in Zambia are stated in the appropriate legislation. Such limits may relate to the kind and nature of the actions and matters of which the particular Court has cognizance or to the area which the jurisdiction extends, or both. Faced with a similar question of jurisdiction two of their Lordships in Codron v MacIntyre and Shaw (1) had this to say:

Tredgold, C. J., cautioned at Page 420

"It is important to bear in mind the distinction between the right to relief and the procedure by which such relief is obtained. The former is a matter of substantive law, the latter of adjective or procedural law...."

3.10. In the case of **Vangelatos and Another v Metro Investments Limited and 3 Others**¹³ cited by the 2nd Respondent, the Supreme Court held that:

"It can be discerned form the foregoing position of the Law, that the absence of jurisdiction nullifies whatever decision follows from such proceedings. This is the position because the power of this Court like that of any other Court is created by the Constitution to adjudicate upon matters in terms of Article 118 and 119 of the Constitution of Zambia vested in it by the People of Zambia to be exercised justly in accordance with the constitution and any other law. The exercise of such power, in the absence of jurisdiction, amounts to an abrogation of confidence reposed in the Courts by the people and contravention of the Constitution and other laws. There is therefore need to cure a defect at any adjudicate level and on appeal whether or not it was an issue in the Court below". (Emphasis ours)

3.11. Further, in the case of **Antonio Ventriglia and Another v Finsbury Investment**³ where the case of **Owners of the Motor Vessel "Lilians" v Caltex Oil Limited (Kenya)** was cited with approval, it was stated that:

"Jurisdiction is everything (and that) without it, a Court has no power to make one more step."

3.12. Put differently, the Supreme Court in the case of **JNC Holdings Limited v Development Bank of Zambia** stated that:

“It is clear from the Chikuta and New Plast Industries cases that if a Court has no jurisdiction to hear and determine a matter, it can not make any lawful orders or grant any remedies sought by a party to that matter.”

3.13. Turning back to this Matter, we have combed through the Court Record before us and have found no documents showing that the Warrant of Seizure subject of this Matter by the Applicant was ever challenged or made a subject of Review or otherwise by the Court below that issued the Warrant of Seizure.

3.14. We have also addressed our minds to the other reliefs sought by the Applicant. Our view is that they are all anchored on or stem from the first relief of the alleged nullity of the Warrant of Seizure as set out by the Applicant. Without the first relief, they have no legs to stand on independently.

3.15. Applying the facts of this case to the law and authorities extensively set out above, the inescapable conclusion we arrive at is that we do not have jurisdiction to hear and determine this matter on the reliefs sought by the Applicant. We do not even have jurisdiction to refer this Matter to the General List as we have been urged so to do by the Applicant because this Court has the same jurisdiction save for additional jurisdiction to deal with economic and financial crimes.

3.16. In the case of **Crossland Mutinta v Donovan Chipanda and Others** which we referred to earlier as we proceeded *Suo Moto*, the Supreme Court held that:

“Similarly, in the present case, we conclude that the absence of jurisdiction on the part of the trial Magistrate nullified the proceedings in the Subordinate Court. To that extent, it was a futile exercise on the part of the High Court Judge to purport to consider an appeal, and consequently uphold, a Judgment of the trial Magistrate when, for want of jurisdiction, the Court Proceedings from which it arose were null and void ab initio. As we stated in the Vangelatos case, the decision of a Court which purports to exercise a jurisdiction it does not have amounts to nothing. This is better illustrated by the Latin Maxim, ex nihilo nihil fit (from nothing comes nothing) (Emphasis ours).

3.17. In the view that we have taken, the cases of **Cavmont Bank Limited v John Mwansa Kalinde and 40 Others**, **Anti-Corruption Commission v Bowman Chilosha Lusambo** and **Godfrey Shamanena v Anti – Corruption Commission** cited by the Applicant are inapplicable and can not aid the Applicant’s case in any way notwithstanding the spirited submissions.

4.0. CONCLUSION

4.1. Having carefully considered the Application and the reliefs sought, we find that there is a subsisting Warrant of Seizure

issued by the Subordinate Court. Thus we find that this Matter incompetently is before us and is dismissed for want of jurisdiction.

4.2. Costs are for the Respondents to be taxed in default of agreement.

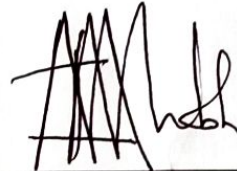
SEALED AND DELIVERED AT LUSAKA THIS 30TH DAY OF SEPTEMBER, 2024.



S. M. WANJELANI
HIGH COURT JUDGE



P. K. YANGAILO
HIGH COURT JUDGE



I. M. MABBOLOBOLO
HIGH COURT JUDGE