

**IN THE HIGH COURT OF ZAMBIA**

**2020/HP/0047**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**BETWEEN:**

**GIVEN LUBINDA**

**1<sup>ST</sup> PLAINTIFF**

**JEAN KAPATA**

**2<sup>ND</sup> PLAINTIFF**

**TASILA LUNGU**

**3<sup>RD</sup> PLAINTIFF**

**AND**

**MUKOSHA FUNGA**

**1<sup>ST</sup> DEFENDANT**

**NEWS DIGGERS MEDIA LIMITED**

**2<sup>ND</sup> DEFENDANT**

**ENVIROMENTAL INVESTIGATION**

**3<sup>RD</sup> DEFENDANT**

**AGENCY, Inc.**

***BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN  
OPEN COURT, ON 28<sup>TH</sup> DAY OF FEBRUARY, 2025.***

*For the Plaintiffs:*

*Mr. B. C. Mutale SC., Ms. M. Mukuka, Mr. T. Kasweshi & Ms. S. Lusengo – Messrs. Ellis & Co.*

*For the 1<sup>st</sup> & 2<sup>nd</sup> Defendants:*

*Mr. E. B. Kaluba & Mr. O. Sambo – Messrs. Mwenye & Mwitwa Advocates.*

*For the 3<sup>rd</sup> Defendant:*

*Mr. M. Nchito SC., Mrs. M. Chakoleka, Mr. C. Hamwela, Ms. N. Chibuye & Ms. N. Nalomba – Messrs. Nchito & Nchito Advocates.*

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## **JUDGMENT**

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**CASES REFERRED TO:**

1. *Khalid Muhammed v Attorney General* (1982) Z.R.49;
2. *Michael Chilufya Sata v The Post Newspaper and Another* (1995) Z.R.;
3. *Moving Unit Video Television (T/A Muvi Limited) v Francis Mwiinga Maingaila – SCZ Selected Judgment No. 18 of 2019;*
4. *The People v Given Lubinda – SSPE/019/2022;*
5. *Zambia Railways v Pauline S. Mundia and Another* (2008) Vol. 1 Z.R. 287;
6. *Given Lubinda v Edmond Lifwekelo and Another – SCZ Appeal No. 2 of 2018;*
7. *Reeves v Associated Newspapers* (1919) TLR;
8. *Barclays Bank (Z) PLC v Mutambo and Another* (Appeal 8 of 2019) ZMCA 271; and
9. *Tolley v Fry and Sons Limited* (1931) AC 333.

**LEGISLATION REFERRED TO:**

1. *Statutory Instrument No. 31 of 2017; and*
2. *The Defamation Act, Chapter 68, Volume 6 of the Laws of Zambia.*

**OTHER WORKS REFERRED TO:**

1. *Hardinge Stanley Giffard Earl of Halsbury, Halsbury’s law of England, 4<sup>th</sup> Edition, Vol. 28, Butterworth;*
2. *Carter-Ruck on Libel and Privacy, 6<sup>th</sup> Edition, LexisNexis Butterworths (2010);*
3. *Gatley on Libel and Slander, 10<sup>th</sup> Edition, London: Sweet & Maxwell Limited (2004);*
4. *Hodge M. Malek, Jonathan Auburn, Roderick Bagshaw, Phipson on Evidence, 17<sup>th</sup> Edition, Sweet & Maxwell Limited (2009); and*
5. *Clerk and Lindsell on Torts, 17<sup>th</sup> Edition, Sweet & Maxwell Limited (1995).*

**1. INTRODUCTION**

1.1 The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs, Given Lubinda, Jean Kapata and Tasila Lungu, respectively, launched this suit against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, Mukosha Funga, News Diggers Media Limited and Environmental Investigation Agency, Inc. (“EIA”), respectively, seeking, *inter alia*, damages for libel. At trial, during cross examination of the 1<sup>st</sup> Plaintiff, the 3<sup>rd</sup> Plaintiff discontinued her claims

against the Defendants and is no longer a Party herein. Accordingly, this Judgment is in respect of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' claims against the Defendants.

## **2. BACKGROUND**

- 2.1 The genesis of this suit, as ascertained from the Pleadings and evidence on Record, is that the Defendants caused to be published Articles in newspapers, which Articles the Plaintiffs took issue with. The Plaintiffs allege that these Articles are defamatory, in that they allege that the Plaintiffs were part of a Cartel that engaged in illegal Rosewood ("Mukula") dealings, which have resulted in the Plaintiffs suffering ridicule, odium, contempt and embarrassment. Accordingly, the Plaintiffs demanded that the Defendants retract their Publications.
- 2.2 On the other hand, the Defendants denied that their Publications were defamatory of the Plaintiffs and refused to retract their Publications, which Publications they deemed as being justified and fair comments.
- 2.3 It is against this backdrop that the Plaintiffs launched this suit.

## **3. PLEADINGS**

- 3.1 The Plaintiffs herein issued a Writ of Summons, claiming the following reliefs: -

- (i) Damages against all the Defendants for libel contained in an article by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, at page 1 of the News Diggers Newspaper Edition of 6<sup>th</sup> December, 2019, titled “LUNGU, TASILA IN MUKULA CARTEL”;
- (ii) Damages against the 3<sup>rd</sup> Defendant for libel contained in its publication of December, 2019 and titled “MUKULA CARTEL HOW TIMBER TRAFFICKING NETWORKS PLUNDER ZAMBIAN FORESTS”;
- (iii) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant’s ‘Opinion’ of 10<sup>th</sup> December, 2019, at page 8, of the News Diggers Newspaper titled “Mukula Smugglers are in Govt, Cartel members are exposing each other”;
- (iv) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant’s ‘Opinion’, at page 8 of the 11<sup>th</sup> December, 2019 edition of the News Diggers Newspaper titled “Kampyongo said criminals like using his name, Kapata to smuggle Mukula. Why?”;
- (v) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant’s article titled “EIA can’t lie Lungu involved in Mukula Saga - Kalaba”,

at page 6 of the 12<sup>th</sup> December, 2019, News Diggers Newspaper;

- (vi) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant's 'Opinion' titled "Remember Kapata said Mukula proceeds were not remitted to Treasury", at page 8 of the 12<sup>th</sup> December, 2019, News Diggers Newspaper;
- (vii) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant's 'Opinion' at page 8 of the aforesaid Newspaper of 13<sup>th</sup> December, 2019, titled "How did 95% of Mukula reach China undetected by Zambian Authorities";
- (viii) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant's 'Opinion' at page 8 of its Newspaper of 16<sup>th</sup> December, 2019, titled "Tasila must learn from Henry Banda";
- (ix) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant's 'Opinion' at page 8 of its Newspaper of 17<sup>th</sup> December, 2019, titled "Chiefs aiding theft of Wildlife, Timber, Minerals and Land";
- (x) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant's 'Opinion' at page 8 of the said News Diggers Newspaper of 18<sup>th</sup>

December, 2019, titled “How processed Mukula comes back to Zambia”;

- (xi) Damages against all the Defendants for libel contained in the 2<sup>nd</sup> Defendant’s article, at page 6 of the said newspaper, of 19<sup>th</sup> December, 2019, titled “Dismissing Mukula report as fake disheartening – EIA”;
- (xii) An Order of Interim Injunction restraining the Defendants, their servants and agents from publishing similar libellous and malicious articles and opinions relating to the Plaintiffs;
- (xiii) An Order of permanent Injunction restraining the Defendants, their servants and agents from publishing malicious articles and opinions relating to the Plaintiffs;
- (xiv) Punitive and exemplary damages;
- (xv) Interest on the said damages;
- (xvi) Further relief the Court deems fit; and
- (xvii) Costs. (Counsel’s emphasis)

3.2 The Writ of Summons was accompanied by Statement of Claim, in which the Plaintiffs aver, *inter alia*, that the 1<sup>st</sup> Plaintiff was at all material times a Politician, a Member of Parliament for Kabwata Constituency, and Minister of Justice for the Republic of Zambia, while the 2<sup>nd</sup> Plaintiff

is and was at all material times a Politician, a Member of Parliament for Mandevu Constituency, and Minister of Lands and National Resources for the Republic of Zambia.

- 3.3 It was averred that the 1<sup>st</sup> Defendant is a Professional Journalist working under the 2<sup>nd</sup> Defendant as the Editor of the 2<sup>nd</sup> Defendant's daily Newspaper, and the 2<sup>nd</sup> Defendant is and was at all material times a Limited Liability Company incorporated under the Companies Act of 2017, and carries on business of news gathering, and dissemination through the press, and online platforms among others. It was further averred that the 2<sup>nd</sup> Defendant publishes a Newspaper styled as 'News Diggers!' which enjoys wide circulation in the jurisdiction, and globally. It was also averred that the 2<sup>nd</sup> Defendant presents itself as an investigative, and a fact verifying/checking Media Institution and has to this effect facilitated "fact checking" courses for journalists.
- 3.4 The Plaintiffs also averred that the 3<sup>rd</sup> Defendant is a body corporate, incorporated in the United States of America, and presents itself as an Investigator of, and campaigner against environmental crimes and abuse.
- 3.5 The Plaintiffs asserted that on or about the 6<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant, in its 'News Diggers' online and print Newspaper, carried a front headline story entitled "**LUNGU, TASILA IN MUKULA CARTEL**", which story was reported by the 1<sup>st</sup> Defendant. According to the Plaintiffs,

the Article published by the 2<sup>nd</sup> Defendant alleged that the Plaintiffs are part of a 'Mukula Cartel' engaged in the illegal harvesting and trade of Mukula logs. The Plaintiffs stated that the said Article specifically reads as follows: -

*"An American based Organisation called Environmental Investigation Agency (EIA) has released a report into smuggling of Mukula logs in Zambia which has implicated president Edgar Lungu, his daughter Tasila, Justice Minister Given Lubinda, his Lands counterpart Jean Kapata and a Traditional Leader, among other influential figures.*

*According to the Investigation contained in the 18 paged report released Thursday, President Lungu allegedly gives instructions, personally, for dubious export permits to be issued to Smugglers who transact for his interests.*

*The EIA Undercover Investigators who were on the ground in Zambia this year interviewed smugglers who revealed the role that Tasila Lungu plays in the Smuggling Cartel.*

*EIA Investigators were told by a relative and business partner of Minister Lubinda, that the Kabwata Member of Parliament is also involved in the Mukula Trafficking Network.*

*Below are excerpts from the EIA Investigative Report which can also be downloaded from the News Diggers Website.*

*Trafficking Routes:*

*Despite bans and public declarations by senior officials, well informed sources – including African and Asian Traffickers – unanimously confirmed that the harvest and trade in Mukula Logs has never stopped in Zambia. The primary Mukula*

*extraction areas in Southern DRC (Kabwata Plateau) and Zambia (Mamba region and Northwest region) are located in landlocked forests, forcing Traffickers to pass through several Countries in order to reach a port from where the timber can be shipped to China, and to a lesser extent, Vietnam. As with other rosewood species, Mukula trade appears to be linked to illegal trade in endangered animal parts, and there are indications that routes used by Wildlife Traffickers to supply Asian Markets are the animal and timber products.*

#### *ZAFFICO's "Special Permits"*

*Traffickers told EIA Under Cover Investigators on multiple occasions that the official export of seized Mukula logs by ZAFFICO has served as a cover for a large clandestine operation for the past two years, allegedly allowing anyone with enough money and high-level connections to secretly export freshly cut Mukula logs out of Zambia.*

*The volume involved are difficult to evaluate, but triangulating information from multiple sources, it can be estimated – conservatively – that on average a minimum of 50 40-foot containers of Mukula have been exported each month under the guise of seized stockpile wood from June 2017 to May 2019.*

*ZAFFICO issues so called "special permits" allegedly for the disposal of confiscated timber to preferred companies yet these permits enable them to transport and export freshly harvested Mukula. The permits specify means of transport and the port of loading for export (usually Durban in South Africa). Based on the ZAFFICO special permit, "joint forces" of army, security and police issue the export permit and required transportation documents for the shipment to Durban through Zambia. These*

*documents would also facilitate the customer clearance for shipping the timber in South Africa.*

*Political Connections:*

*Chinese traders explained to EIA Investigators that it is not difficult to circumvent the export ban.*

*“If you have connections with high level (governmental) relations, you can get an export permit with ZAFFICO and you are good to go. But you have to have a reliable local partner to help with that. Sometimes that partner takes your money but did not actually submit the exporting permit.”*

*A reliable connection on the ground and in the ruling party appears to be an important channel to obtain the ZAFFICO special permits.*

*An influential Zambian trafficker, Mr. J, stated:*

*“I am a Government Officer. What happens is that we are protected by the Party (Patriotic Front), by the Government.”*

*He described the trafficking activities as a sort of “joint venture with the Central Committee”, whereby the ruling Party ensures special permits for traders/loggers in order to secure votes in rural areas. “Because they lost a seat in Sesheke so they want to win that province,” he explains.*

*One way to do that is give permits to close allies who are using them to buy freshly cut Mukula logs from communities in the province in exchange for their votes. The same trafficker explains that he shares the ownership of a forest concession in the Northwest of the Country with a well-connected “friend.”*

He explained to EIA Investigators that he and his associates would “just need a partner” to buy Mukula they are harvesting in their concession. He explained: “I am in the system. I work in the system. I work in the Government, but I do private work also. And this is actually the business.” For his business partners, this trafficker usually arranges all necessary documentation: production document, transport (“conveyance”) document from the point of harvest, export permit, and the “certificate” for the company, which he described as the “very crucial document” needed to start and complete the process. The Mukula logs he offered EIA Investigators are harvested in the Northwest Province, then moved to Mansa where they are containerised before being trucked to Lusaka. In Lusaka, the containers are moved to Namibian trucks for transport to Walvis Bay. The trafficker said he works in collaboration with an agent located at Walvis Bay Port who facilitates the export. Given the diplomatic incidents related to the Mukula trade between Zambia and Namibia, he recommended to mis-declare Mukula logs as “African timber” or “Guibourtia coleosperma.”

*Jean Kapata’s connections:*

Foreign traffickers also need to establish strong connections. One of them, reportedly the owner of the company Qingwan, apparently partners with Jean Kapata, the Minister of Land and Natural Resources, to get the timber out, according to one of his business associates and a close relative who talked to EIA:

“EIA: How could you get logs cut? They all said no way get out... have you successfully got logs for a couple of years?”

Ms. R: I used to do business in DRC but my (relative) has been in Zambia for years. [...] We shipped out a lot of Mukula.

*Two years ago, we lost a lot of money due to the export ban. Last year we got access to the documents in Zambia. We are one of the three exporters who got the permits there. We were able to get containers out of Zambia since then.*

*EIA: You have been shipping out for a year?*

*Ms. R: Yes! We have been in this business for over ten years in Zambia.*

*EIA: Did you mention last time that you are partnering with the Minister of Land and Natural Resources there?*

*Ms. R: Yes.*

*EIA: A female Minister?*

*Ms. R: Yes.*

*EIA: Her name is Kapata?*

*Ms. R: Yes.”*

*“Big money” for the “Big Boys” and the “Big Girls”*

*Political connections to corrupt Senior Officials appear to be the key to gain access to the special permits. The Chinese trader who has been involved in Mukula trafficking for more than five years explains:*

*“Mr. D: I do not give money to the President directly. I bribe those who are above Ministers’ level.*

*EIA: Above Ministers? You do not have to pay the Ministers?*

*Mr. D: I do not have to establish a relationship with the Ministers. Instead, I got well with those who are close to*

*the president, the ones that collect money for the President. I have good connections with people around the President, who collects money for him. Those guys are the regular guests I have to social frequently with drinks. Even the Ministers go visit their homes for drinks.*

*EIA: So, even Ministers are no match for those guys?*

*Mr. D: No need to get acquainted with the Minister whose powers are limited to certain narrow fields, which does not serve our needs.*

*EIA: Who exactly do you refer to by “people close to the President”, someone like the bodyguards?*

*Mr. D. No, these are who doing business, running companies, etc., under the President’s name and collect money [for the President] ... They are acting like the President’s “house-keeper.”*

*In order to guarantee access to fresh Mukula logs, he also reports to have “donated” US \$40,000 for the President to buy outfits for his re-election campaign.*

*Using his political connections, a Zambian trafficker told EIA Investigators that he is paying US \$5,000 for a “special permit” and then will pay approximately US \$1,000 in bribes to local officials in order to ensure smooth loading of the container. When asked about the road-blocks and the police, he answered: “Police on the way, they are my babies. They are not a problem, because there is a caveat: when the goods are going, we put a police officer there for exporting those things.”*

*Another trafficker, Mr. O, complains that the bribes he has to pay have become too high, and the Mukula business would now only*

*be reserved for well-connected individuals or wealthy exporters.  
He explains:*

*“Mr. O: Yes, you can buy [Mukula]. Depending on how much you can afford to pay. What is now expensive to make us local guys difficult to export is the export permit. It is very expensive. Actually, to some extent, its more expensive than buying the product and bringing it here [Lusaka], because that’s how ZAFFICO has done it. If they are telling you to produce 15,000 dollars, where do I get that money? It means they are telling me do not do the business, that it is for the big boys.*

*EIA: So 15,000 dollars is the price that you have to pay for the document?*

*Mr. O: Yes.*

*EIA: Okay. Does the Government actually have that money? That goes into the Country or it just gets pocketed?*

*Mr. O: That is for the big boys. We do not know because looking at what is going on, Government as an institution is broke but there are a few Government Officials who have got money. Where are they finding the money? Through this, same as copper, Mukula and other things that they are selling. [...]*

*EIA: So, the 15,000 dollars, you are saying it does not... you don’t know...*

*Mr. O: It will be received by a Government Official. Where he takes it... I do not know if it will go in a Government account or an individual account. Where the money goes, no one knows. Whether it goes into the Government or*

*individual pocket. But now you find these guys buying big cars.”*

*Tasila Lungu Connection:*

*Confronted with her involvement in the Mukula trade, Tasila Lungu publicly refused the allegations and declared: I have not at any juncture been involved in either of the alleged criminal transactions. This kind of reporting is highly regrettable. 81,82 EIA Undercover Investigators had the opportunity to talk to two individuals involved in the traffic of Mukula who clearly explain Tasila Lungu’s role:*

*“Mr. O and Mr. L: They have [Mukula] taken, diverted by the daughter of the Man [...] The daughter of the President, whatever comes she gets first of first.*

*EIA: So, some money pays to the President?*

*Mr. O: No, it’s the daughter... The daughter is directing... whatever comes in Lusaka, she has an ear to the ground... she will easily know that containers [...] and she will be fast to take care of them.*

*EIA: So, what is she?*

*Mr. O: The daughter...*

*EIA: The daughter of the President?*

*Mr. O: Yes.*

*EIA: Of course [...]*

*Mr. O: The moment she gets wind of it, she has engaged a lot of guys, when it comes, they call her first thing.*

*EIA: What's her name?*

*Mr. O: Tasila... It's a common name.*

*EIA: That's a pretty name.*

*Mr. O: She is a councillor in the next shanty compound here Casino down town yeah that's the councillor.*

*EIA: So timber business is her side business?*

*Mr. O: Yes, but you know the father knows everything. You know the father can't do these other businesses so these other businesses are done by the daughter and others."*

*The traffickers that explain Tasila Lungu's role are themselves very organised. One trafficker appears to be the brains of the operation connecting the other members of the illicit network with the high authorities. Another trafficker is a timber expert who claims to have worked in the business for 20 years, and the last person involved leads field operations. He deals in particular with loggers, local communities, and the owners of Mukula stockpiles in the bush. At the time of the investigation, this trafficking network was exporting Mukula logs via the ZAFFICO scheme and preparing their next move, according to the members met by EIA Investigators.*

*Chief Kafula's Quid Pro Quo: Votes in exchange for Mukula Logs:*

*EIA Investigators were told by the business partner of Kafula Musungu II, Senior Chief Nkula in Muchinga Province, that the Chief allegedly convinced a large majority of "his people" to vote for President Lungu in the latest Presidential election. As a thank-you gift, the President reportedly issued him a permit for the export of 100 containers of Mukula in 2016. But the permit was suspended in 2017, after only 38 containers had been*

exported. The Chief told EIA Investigators that the President assured him in person that he is about to issue a “special permit” to export Mukula “just for [him].” The permit would allow the export of 100 containers and could be renewed easily. The Chief travelled to Lusaka in Mid-March, 2019 to meet the President, hoping to finally close the confidential deal, but the permit was allegedly pushed back for a couple of more weeks. The Chief explained to EIA undercover Investigators:

“Chief Kafula: I try to get in contact with some people so that when we start producing Mukula trees so that we can be exporting. I don’t want to work with ZAFFICO. [...] I think I will make an appointment with the President so that he can follow up with my application because I left my licence to the State House to the President, and he gave it to somebody so that they can process the papers, it is just to renew. My [2016] licence, I didn’t finish my containers that I was supposed to finish. So, I claimed to finish them, no one will say no. [...] Me, I go straight to the President. I don’t go to this office and other things. It is him.”

Chief Kafula produced his cancelled export permit to EIA Investigators and further explained that his objective is to reach out to several Chiefs in other areas in order to fill the containers, as he did three years ago. In 2016, his licence was used to cut trees in several other religions. He bought the timber from other traditional Chiefs and would himself sell the containers to a business partner.

Given Lubinda’s Group:

*EIA Investigators were told by a relative and business partner of the Minister of Justice, Given Lubinda, that the Minister is also involved in the Mukula Trafficking Network. In addition to timber deals with the Minister, the informant stated that they were also involved in trading gold and diamonds from Angola. He explained to EIA Investigators:*

*EIA: So, what we are here for is to try to buy some Mukula. Can you still do it?*

*Mr. H: That's my business.*

*EIA: We are concerned, is that possible? Is it illegal or legal?*

*Mr. H: It is illegal but now it's open. People are trading. But not everybody, only for special people and even myself I alone I cannot do it.*

*EIA: Okay you are going to hire people?*

*Mr. H: Yeah, Government people. Number three Minister, Justice Minister.*

*EIA: And you have been working with them before in the past?*

*Mr. H. He is my travel mate! And I am his bishop, I do with him business. I do go to Angola. I was supposed to go to Angola. You know stones? Precious stones.*

*EIA: Okay so you are involved with that?*

*Mr. H: Yes. Diamonds and gold."*

*Mr. H. confirmed to his knowledge the existence of "special confidential" permits to a "very small group of people". At the first meeting with EIA Investigators, he was not sure about the details, but he said that he was to talk to the Minister to get*

*details. A week later, he introduced EIA Investigators to a Company called “TiJem” directly recommended by the Minister, according to him. Mukula trafficking appears to have deep roots at the heart of the current Government in Zambia. The issuance of clandestine rights to export in exchange for votes, and the cover apparently provided by the ruling Party’s Central Committee are highly problematic for national governance. The Mukula cartel poses a major threat to Zambian rule of law.*

3.6 The Plaintiffs averred that the 2<sup>nd</sup> Defendant’s Article for the most part cited the 3<sup>rd</sup> Defendant’s Publication as the source of the above Article complained of. The Plaintiffs further averred that neither the 1<sup>st</sup> Defendant nor the 2<sup>nd</sup> Defendant and their servants/agents contacted them to verify or fact check the story, prior to its sensational publication.

3.7 In addition to the above, the Plaintiffs averred that the aforesaid Publication by the 3<sup>rd</sup> Defendant titled **“MUKULA CARTEL HOW TIMBER TRAFFICKING NETWORKS PLUNDER ZAMBIAN FORESTS”** was published on or about the 5<sup>th</sup> December, 2019. It was asserted that the 3<sup>rd</sup> Defendant’s Publication alleges that the Plaintiffs are involved in the aforesaid illegal harvesting and trade of Mukula logs and that the following are excerpts from the 3<sup>rd</sup> Defendant’s Publication:

*Page 1 “In Zambia the Environmental Investigation Agency (EIA) found that a handful of very high profile figures have apparently orchestrated and facilitated massive*

*trafficking operations for years that are driving Mukula rosewood trees to the edge of commercial extinction, devastating vulnerable forests and threatening communities' livelihoods.*

*This illegal trade generates a total of approximately US \$7.5million paid annually in bribes and informal "fees", as traffickers described to Investigators.*

*According to the traffickers met by EIA undercover Investigators, prominent figures of the Zambian Government and Political sphere, including President Edgar Lungu, his daughter Tasila Lungu, Given Lubinda (Minister of Justice), and Jean Kapata (Minister of Lands and Natural Resources), are central figures in this illicit network. If not dismantled, this Mukula cartel\* has the power to derail the international protection recently granted to the rare African trees under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). At the current rate of exploitation, the rosewood species may soon be extinct.*

*Accordingly, to EIA's research, corruption is a key enabler of these trafficking operations. Corrupt practices and timber trafficking described to EIA Investigators take many forms, including paying US \$40,000- for outfits allegedly "donated" by a powerful Chinese trader to the Zambian President for his current re-election campaign. EIA Investigators were told that the special permits to export Mukula are frequently traded in exchange for votes in major elections. An influential trafficker claims that his clandestine operations are protected by "the party" (the Patriotic*

Front); that it is a “joint venture with the Central Committee”. The Mukula cartel poses a major threat to the Zambian rule of law.

EIA Investigators were told by multiple sources that trafficking networks, described by one trafficker as a “cartel”, were closely connected to the President’s Office the President himself, his daughter Tasila, the Minister of Justice Given Lubinda, and Chief Kafula Musungu II.

Page 4 “Lusaka East Forest Reserve, the only natural forest reserve outside of the Capital’s vicinities, has been a protected area since 1957 as it provides critical ecosystem services to Lusaka and is a key water recharge zone for the City’s aquifers. In 2017, residents of Lusaka East reported seeing flyers across their community saying that a luxury housing development would be built in the forest. The luxury development, a joint partnership between Sunshare, a Chinese owned Corporation and Zambian Air Force Project Limited, sold plots of the protected forest reserve to high-ranking members of the Zambian Government such as Minister of Lands and Natural Resources Jean Kapata and Chief Justice Irene Mambilima.”

Page 14 **“Given Lubinda’s Group**

EIA Investigators were told by a relative and business partner of the Minister of Justice, Given Lubinda, that the Minister is also involved in the Mukula trafficking network. In addition to timber deals with the Minister, the informant stated that they were also involved in

*trading gold and diamonds from Angola. He explained to EIA Investigators.*

*“EIA: So, what we are here for is to try to buy some Mukula. Can you still do it?”*

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*“TiJem” directly recommended by the Minister, according to him.*

*Mukula Trafficking appears to have deep roots at the heart of the current Government in Zambia. The issuance of Clandestine rights to export in exchange for votes, and the cover apparently provided by the ruling Party’s Central Committee are highly problematic for national governance. The Mukula Cartel poses a major threat to Zambian rule of law.*

3.8 The Plaintiffs averred that the 3<sup>rd</sup> Defendant’s Publication was circulated globally through print and electronic media and vied that the 3<sup>rd</sup> Defendant also circulated a Video relating to the allegations in the aforesaid Publication. It was further averred that notwithstanding the serious allegations contained in the aforesaid Publication, at no point prior to the release and wide circulation of 3<sup>rd</sup> Defendant’s Publication were the Plaintiffs given opportunities to give their side of the story, and verify the information, as allegedly given by persons whose identities and names are not known.

3.9 The Plaintiffs asserted that on the 10<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published an Article at page 5 of its Newspaper titled, **“My involvement in Mukula Cartel fake news – Lungu.”** The article reads:

*President Edgar Lungu has described the story which implicated him, some Cabinet Ministers, and his daughter in the illegal sale of Mukula as false news being perpetrated by some Zambian*

journalists. And President Lungu says the continued misrepresentation of the Constitution Amendment Bill 10 has the potential to endanger peace in the Country. Special Assistant to the President for Press and Public Relations Isaac Chipampe said President Lungu said this when British High Commissioner to Zambia Nicolas Woolley and Department for International Development Representative Emeline Dicker paid a courtesy call on him, Monday. Chipampe said President Lungu had many times restrained himself from acting on fabrications because he hoped one day, journalists in Zambia will rise above fake news.

“And President Lungu expressed concern that the Country is being polluted daily with lies that have the potential to endanger peace in the Country. President Lungu gave an example of the Constitution Amendment Bill 10 as well as one document that has been misrepresented. President Lungu further said the talk mentioned in the illegal trade of Mukula was another such case of false hoods being perpetrated by some Zambian journalists,” Chipampe said. “The President hoped that Zambian journalists would rise above fake news and return to Professional reporting. The President said he has many times restrained himself to act on fabrications because he hoped one day journalists in Zambia will rise above fake news...”

3.10 The Plaintiffs vied that in the aforesaid edition of 10<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published an ‘Opinion’, at page 8, titled **“Mukula smugglers are in Government, Cartel members are exposing each other.”** The full Opinion reads:

“What has been revealed in the recently released investigative report about Mukula smuggling in Zambia and the people

*involved in the Cartel is simply a connection of dots that we have been reporting about for the past two years. Those who are shocked with the expose, are shocked because they believe more what foreign media reports, rather than what the local journalists investigate; otherwise, we told this story a long time ago! We are glad that members of the Mukula smuggling cartel have started betraying each other and providing all the information that the Zambian public deserves to know. This was expected because there is a no honour among thieves.*

*This week, while those who wish to use the publishers of the recent investigations are gathering their courage to do so, we would like to go back to what we previously reported in our editorial comments and what the Government officials have had to say in defence of this State sponsored illegal trade of the precious endangered Mukula.*

*JANUARY 3, 2018:*

*Like we have stated before, only the Patriotic Front is capable of removing itself from power; and so far, they are on the right track. The revolution that will pluck them out is finally simmering, as evidenced by the latest incident where Patriotic Front youths thwarted an attempt by their masters to smuggle Mukula logs out of the Country. Today we must focus on the criminals in Government who are in a looting competition.*

*There is nothing more pleasing to journalists than seeing the public finally joining the crusade against a matter of critical national importance. It is not common for citizens to rise when an illegality is brought in the public domain. Sometimes people just read about the revelations in the Newspaper and ignore.*

*When you are lucky, the public reacts only too late when there is nothing that can be done to prevent the theft.*

*That is why we are delighted as a media organisation that this issue of Mukula smuggling by some disgruntled Patriotic Front Government officials has finally caught the desired attention of concerned members of the public, and at the right time. It does not matter now what useless answers the Government comes up with; the public is now convinced that some Ministers and State House Officials are getting rich from the illegal trade of this natural resource. So, no amounts of threats will change this correct public perception now. The citizens have opened their eyes and they have seen how their leaders are eating Masuku on their heads.*

*We have been reporting about this Mukula theft for months, detailing how the police were being used to facilitate the smuggling while arresting and beating up those who opened their mouths to expose the Cartel. We have published first-hand accounts before from witnesses involved in the trade, on how the smuggling is done.*

*On October 8, 2017 under the headline: "MUKULA SCAM": Ministers are involved", we reported how police officers in Lusaka's Garden compound were used for laundering activities.*

*"A container loaded with illegal cultivated Mukula logs is packed at Lusaka's Garden Compound Police Station. According to a News Diggers Investigation, however, the truck has not been impounded for transporting illegal goods, but there is an ownership dispute among the powers that be, while the hired dealers have turned against each other.*

*A Zambian businessman identified as Emmanuel Simangolwa, alleged to be the owner of the truck got agitated when he was called to explain why his truck was parked at the Police and whose Mukula he was transporting.*

*Another businessman identified as Alex Tembo, explained how he was crooked into transporting illegal Mukula and ended up being arrested by Police who further (allegedly) stole US\$4,500 from him before demanding a K10,000 bribe for his release”, reads the excerpt from the News Diggers Investigation.*

*The summary of what we learnt is that the powerful criminals in Government do not directly involve themselves in these transactions. In order to retain plausible deniability, the Ministers and Sate House Officials hire private dealers whom they empower with resources to fetch Mukula from various regions of Zambia where it is in abundance. Then the dealers hire transporters without disclosing the truth about the manifest of the cargo. That way, it becomes difficult to link the smuggling to the master minders. If the scam is exposed, the transporter is abandoned while the drivers are arrested.*

*In the case of the Garden incident, our information was impeccable because we had names of the dealers involved, pictures of the goods and recordings of their conversations. That is when we contacted the Police for an explanation, there was nothing that Spokesperson Esther Mwaata Katongo or Lusaka Province Police Commissioner Nelson Phiri could say; other than “if the truck is at the Police Station, then it means we are investigating the matter.”*

*In fact, as we pressed them further, the Police told us that all cases to do with Mukula would be answered by the Deputy*

*Inspector General of Police. This resolution was made because the Police knew the stakes were high; the people behind Mukula smuggling are not small boys and girls. These are big shots who have the authority to command an army to offer protective cover during their operations.*

*We are not surprised that State House and line Ministers have been thrown into disarray after being busted, because criminals do things in a hurry and they never prepare for answers when caught. Typical of rats when a light bulb is switched on – they scamper in all directions, leaving the cockroaches to be answerable for the missing groundnuts. When the Patriotic Front youths intercepted Mukula smugglers on Kafue Road, State House first issued an empty statement, then the Minister of Home Affairs issued a threat against the vigilant youths, leaving the Ministry of Defence to explain the scandal. How? Mukula trees grow under the Ministry of Lands and Natural Resources while its cultivation is managed by ZAFFICO. Maybe we could tolerate the Minister of Transport so that we ask him about the coincidence of lifting the ban on night travel for trucks, only a few weeks before this Mukula scam; but not the Permanent Secretary for Defence.*

*We asked Mr. Sturdy Mwale, if the Ministry of Defence was involved in facilitating this transaction on behalf of Government, why weren't those trucks kept at Arakan Barracks or Zambia Air Force base before departing? Why were they hidden at a private facility in Chinika area?*

*Let the Minister of Lands and her Permanent Secretary show up. Let the named individual in State House who was driving Toyota Land Cruiser registration number ALG 3464 on that day, come out and face the Zambian people with answers. Where were they*

*taking the Mukula logs before Patriotic Front youths intercepted them? Why is Sate House involved in the sale and export of Mukula? People may hide today, but the truth will come out one day.*

3.11 The Plaintiffs averred that on the 11<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published, at page 8 of the Newspaper herein, an ‘Opinion’, titled **“Kampyongo said criminals like using his name, Kapata to smuggle Mukula. Why?”**. The Opinion was reproduced as follows: -

*“We are continuing to refresh our readers’ memory over the Mukula smuggling saga, so that they can connect the dots and form their own opinions around this issue. The year was 2018 and there was a huge public uproar over Minister’s alleged involvement in the smuggling of Mukula. Names were being dropped by those who were involved in the illegal trade. In an attempt to clear the air, Home Affairs Minister Stephen Kampyongo went to the National Broadcaster where he put a defence that baffled us. So, we wrote an opinion:*

**APRIL 19, 2018**

*Minister of Home Affairs Stephen Kampyongo made a very interesting revelation when he featured on the ZNBC Sunday Interview a few days ago. According to him, criminals are generating fake export documents in order to smuggle Mukula logs out of the Country and when they reach the boarder, they simply say a lie that a Minister sent them and they expect to pass. In his own words, Mr Kampyongo said: “I am not shy to tell you that we had to even go beyond and discipline some of our own law enforcement officers who were being cited to be part*

*of these cartels... Documentation was being manufactured to justify some of these movements of Mukula to some points and there was collusion. Some people are mischievously using some other people's names. My name was, of course, mischievously mentioned by some characters", he said.*

*It is not only his name which is being used by smugglers. He said other Ministers, like his Lands counterpart Jean Kapata, have also been mentioned by criminals.*

*"You know criminal minds can be very clever. If they find a law enforcement [officer] and say 'no, what we are carrying here is for the Minister of Lands' even when they know that they are lying, they would expect to get away with that", said Mr. Kamyongo.*

*We agree with the Minister of Home Affairs. In a normal Country, the name of the owner of goods being exported doesn't matter if the export documents are not in order. It matters less what position they hold in society. But for a lawless Country like Zambia where criminals do not need documents to export natural resources, this is all they need.*

*Indeed, criminals in Zambia have a habit of using other people's names in order to get away with their criminal activities. However, they do not just pick names randomly.*

*No they don't! Like the Minister rightly observed, criminals are very clever, so they always make sure that the lies they tell are believable. Before they decide on a name to implicate, they first consider what they know about the activities that such a Minister is involved in. Then to remove any doubt, they make sure to use a name of a Minister that fits the narrative of public perception.*

*For example, if smugglers went to the border with 25 containers of Mukula logs and lied that the illegal consignment belonged to Vice-President Inonge Wina, we strongly believe that such a lie would raise a red flag. No Officer would easily believe that Her Honour the Vice President, given what the public knows about her character, would send criminals to smuggle Mukula out of the Country.*

*However, if the criminals went to the border and lied that 'President Edgar Lungu's political advisor Kaizer Zulu sent us to take this Mukula to China and he is actually coming behind us to facilitate its passage to the port', the customs officers would not hesitate to oblige without asking many questions. In fact, they would do so hurriedly for fear of being blasted by the mighty powerful Kaizer, not knowing and his name was probably just being used.*

*It is for this reason that we are concerned about the revelation from the Home Affairs Minister that criminals are using his name and that of Honourable Kapata, among others, to swindle the Government and the people of Zambia. We are even more concerned with his admission that law enforcement officers under his Ministry have been involved in the cartel.*

*Out of all the Ministers, why would the criminals and corrupt Police Officers pick Stephen Kampyongo and Jean Kapata? What is it that they know about these Ministers that can make their lies believable at the border? Well, the bad news to the two Ministers is that in the eyes of the public, they are corrupt. The truth might be different from this perception, but public perception is a form of truth. That is what counts when it comes to criminals getting away with such illegalities.*

*The question Honourable Kampyongo and his colleague Kapata must ask themselves is; what did they do to fall into such a criminal narrative to the extent that smugglers start using their names? Bad publicity does not fall from hell, it is built over a period of time and an innocent person strives to clear their name. What have these two Ministers done about the people who are using their names? Which Court are they appearing in? Why have they not been prosecuted?*

*Honourable Kampyongo cannot claim that his name was merely used because of the nature of Government position he occupies. Customs Officers work for the Zambia Revenue Authority and the Zambian Revenue Authority falls under the Ministry of Finance. Why are these criminals not using the Finance Minister's name? It is not enough for the Home Affairs Minister to discipline criminal elements in ranks and file of the law enforcement wings. Discipline must start with him. He must dissociate himself from people of questionable character. There are many businessmen out there who would love to shake hands with him because of his influence, and he should know that in business terms, especially among entrepreneurs and contractors, a handshake means more than just "how are you".*

*If truly Madam Jean Kapata is innocent and the corruption perception is unfairly bestowed on her, she must change her ways and re-evaluate her friendships with the people who deal in Mukula.*

3.12 The Plaintiffs further vied that on 12<sup>th</sup> December, 2019, another article titled **"EIA can't lie Lungu involved in Mukula saga - Kalaba"**, was published by the 2<sup>nd</sup>

Defendant. The article which appears at page 6 of the Newspaper reads: -

*Democratic Party President Harry Kalaba says the Environmental Investigative Agency EIA cannot lie on the involvement of president Edgar Lungu in the illegal trade of Mukula logs.*

*According to special Assistant to the President for Public Relations Isaac Chipampe, Monday, President Lungu said the recent story which implicated him in the illegal sale of Mukula logs was false news being perpetuated by some Zambian Journalists. But Kalaba argued, in an interview, that the EIA could not lie on a report like that magnitude. "Those people (EIA) cannot lie! For them to go to the extent of bringing out the name of the President they are not joking! He is not the first African President to have been in that office. His [duty] is to ensure that he preserves the Country's heritage, his [duty] is to ensure that the rule of law is adhered to, but he is the first one undermining the rule of law. How do you explain a situation where a President tells Chief Nkula that he has given authority to Government officials, politicians to cut five containers each of Mukula tree and then he gives chiefs another 100? I mean what authority does he have to do that?" Kalaba questioned.*

*"So I tell you that the President is abusing his office. And now that he has been exposed, he is crying 'no it is not true', it is true! The President has abused his powers and he has been involved in those Mukula trees, those people have spoken! I don't think they can lie, I don't think they can lie. Between the Environmental Investigation Agency report and President Lungu's statement I wouldn't believe the report not the President's statement because remember how many times he*

*has told us that there is no corruption in this Country and yet we are seeing it”.*

*He said President Lungu had lowered the standard of the Presidency and the only solution was for Zambians not to vote for him in 2021. “So, on his part he should also know that he has lowered the standard of the Presidency as well as our international image has been dented because of his involvement in those activities. If he is found in those issues what about the Permanent Secretary, what about the Directors, what about the Administrative Officer it’s free for all. So, the only solution is to kick them out in 2021”, he said. “Forget things like Impeachment those things in Africa it’s very complicated because the only way in Africa that you have to remove a leader is through the ballot box. Let us concentrate on 2021, we will remove him. It is just a few months before 2021. My own opinion is that Zambians should stand up and work with the DP and remove President Lungu. He will be kicked out in 2021! He created enough scandals for himself. Every scandal you see procurement of oil, procurement of [materials for] that road, procurement of that... only because things are not coming out, when things start coming out it is when you realise that the President is involved in almost everything. So, it is sad and very sad for our Country”. And Kalaba said President Lungu lacked the ambition to drive Zambia’s developmental agenda forward. “You will need a leadership that is proactive not reactive, you need a visionary leadership, you need a different leadership; a leadership that will call sin by its rightful name, you need men and women of decorum that will go in those offices not for self-aggrandisement but to serve the people of Zambia who have been deprived of quality leadership for far too long. So, leadership has got everything to do with it don’t be cheated. Everything is*

*leadership, everything has to do with leadership. Today Rwanda is an advanced Country than ours why? It's leadership", said Kalaba. "Today Singapore whose GDP was same as Zambia at Independence is better because of leadership. Today we are talking about Kenya which is not allowing foreign enterprise to take advantage of them it is because of leadership. So, these things have to do with leadership. President Lungu is not ambitious, he is a very unambitious President! You need an ambitious President to drive Zambia's ambitious agenda and that is sitting right well with the Democratic Party under Harry Kalaba."*

3.13 It was averred that in the aforesaid edition of 12<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published an 'Opinion' at page 8 thereof, titled **"Remember, Kapata said Mukula Proceeds were not remitted to Treasury."** This 'Opinion' reads: -

*"As the debate for Mukula smuggling involving high profile Government officials raged on in 2018, Members of Parliament took authorities to task, demanding to know how the so-called confiscated Mukula was disposed and how the money was spent. Lands Minister Jean Kapata gave a statement in the National Assembly, revealing that Mukula proceeds were in fact, spent without passing through the Treasury. In shock, we wrote our editorial opinion:*

**March 1, 2018:**

*In February, 2018, Lands Minister Jean Kapata failed to justify why ZAFFICO was selling confiscated Mukula logs at US\$600 per tonne when the market price was US\$2,500 per tonne. But that was the least of our concerns. What we found baffling was*

*the explanation that money realized from the sale was given to Kawambwa Tea, a subsidiary of ZAFFICO.*

*When Milenge Patriotic Front Member of Parliament Mwansa Mbulakulima asked Kapata whether a special account had been created for the Mukula proceeds, the Minister said the resources were being used to revamp Kawambwa Tea. “An account has been opened through ZAFFICO and the proceeds coming from the illegal sale of Mukula, Mr Speaker, is being revamped into Kawambwa Tea Company which I think had folded up and it has now been given to ZAFFICO to run. So, all the proceeds that are being collected from this particular sale is going to revamp the Kawambwa Tea”, Said Kapata. Members of Parliament took turns probing the Minister, demonstrating to her that failure to remit Mukula proceeds to the Treasury was in breach of the law. This pressure from the Honourable MPs was not enough to convince Madam Kapata, and to date, she still doesn’t see anything wrong with what ZAFFICO did with public resources.*

*Like the Members of Parliament observed, no one was questioning Government’s decision to revamp Kawambwa Tea, but the people’s representatives in the House were challenging the procedure used for remitting this money to ZAFFICO’s subsidiary.*

*As a media organisation, we have taken note that the MPs actually missed the bigger problem on this issue. The decision by Madam Jean Kapata’s Government to spend Mukula proceeds is a critical example of what we meant when we said President Lungu will be prosecuted for accepting to be Board Chairperson of Industrial Development Corporation.*

*The bigger scandal about this issue is that, the Zambia Forestry and Forest Industries Corporation (ZAFFICO) is a State-owned enterprise incorporated under the Industrial Development Corporation (IDC). This means the operations of ZAFFICO and its extended subsidiaries like Kawambwa Tea are the responsibility of President Lungu's IDC.*

*Now, there is a huge difference between Government and the IDC. While a President sitting with one or two Ministers can constitute Cabinet and make decisions on behalf of government, they cannot make decisions on behalf of the Industrial Development Corporation which has its own board and management system. Therefore, it baffled us to hear Honourable Kapata repeatedly tell the House that "we did not break the law because Government made the decision", without any reference to the role that IDC played to invest millions of dollars from Mukula proceeds into Kawambwa Tea.*

*We are here asking President Lungu like the Prosecutor in his abuse of office case will ask him, not as a retired head of state, but as former IDC Board Chairperson. Who approved this decision at the IDC to invest this money into Kawambwa Tea? Which other Board Members were present at that meeting who agreed that it was okay for Mukula proceeds; public money to be spent without first remitting it to the Treasury for budgeting? Was this money given to Kawambwa as a Shareholders' loan? What was the modality? The Prosecutor will demand to know, which IDC Board Members agreed with Mr. Lungu to allow ZAFFICO record a US\$1,900 per tonne loss from Mukula logs. When answering these questions, Mr Lungu will not be with the Finance Minister or Madam Jean Kapata who opened the can of*

worms in Parliament. He will be on his own, an ordinary man with no more political influence or State machinery on his side.

How will President Lungu prove his innocence from allegations that he, as IDC Board Chair, unilaterally used ZAFFICO and Kawambwa Tea to divert Mukula proceeds to his political party's campaign activities in a bid to remain in power? We ask this because people are watching and there is no one in PF who can explain where the Ruling Party has obtained such gigantic portions of wealth without meaningful business operations. Where are the millions of campaign books, bicycles, cell phones and clothes distributed across the Country coming from? This money belongs to the people of Zambia, it has been stolen by those in power, converted into campaign flyers, called exercise books.

We urge fellow media houses, civil society organisations, lawyers, farmers, teachers, street vendors and everyone else who cares about Zambia to wake up and see what is happening inside this State capture vehicle called IDC. We demand from our Members of Parliament that they revisit this issue in Parliament and ask the right questions.

What is more dangerous about the IDC is that Zambians have not woken up to realise the power it has to either liberate our Country or completely wipe out Zambia's economic potential. People do not realise that the Ministry of Energy is a shell today because ZESCO, Indeni, Nitrogen Chemicals of Zambia and other entities are now all under IDC. Institutions under the Ministry of Information, Ministry of Defence, Ministry of Agriculture, Ministry of Finance, etc, are now all under President Lungu's IDC. This is where the action is.

*Our Members of Parliament must not waste time asking Jean Kapata how she spent Mukula money, the culprit is the Minister of Finance as the Shareholder of IDC and also the person in charge of the Country's Public resources. Let the Minister of Finance come to Parliament to explain which Chinese bought our Mukula at such a loss, because Zambians will have to wait 50 years before another Mukula tree is big enough to be harvested. We need to know the name of the Chinese buyer and who connected ZAFFICO to this Company. After that, the Minister should lay on the table of the House, the name of Board Members at IDC who are making these decisions.*

*It cannot be business as usual where Ministers go to Parliament, lie and get away with their boza. They need to be challenged and humiliated. Crooks have to be called for who they are and criminals alike.*

3.14 The Plaintiffs asserted that on 13<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published, at page 8 thereof, an 'Opinion' titled **"How did 95% of Mukula reach China undetected by Zambian authorities"**, which is reproduced below: -

*"A report by the Centre for International Forest Research (CIFOR) on Mukula production and trade revealed that Zambia declared to have exported 3,000 m<sup>3</sup> of Mukula logs valued at US\$900,000 in 2016, while China declared Mukula imports from Zambia of about 61,000 m<sup>3</sup> for an approximate value of US\$87 million.*

*Simple arithmetic tells us that only five percent of the Mukula logs exported to China were accounted for, while proceeds from 95 percent went into private pockets. In other words, there was 20 times more Mukula exported to Asia than what our Zambian authorities declared.*

According to experts from CIFOR, this was only made possible through bribes paid to State Officials, and we agree.

*“High volumes of Mukula continue to be exported as logs despite regulations prohibiting it. Recent Mukula production in Zambia could have amounted to above 110,000 m<sup>3</sup> per annum, with revenue losses of about US\$3.2 million and bribes paid to State Officials of about US\$1.7 million. While official statistics remain incomplete and unclear, comparing Zambia and Chinese customs data reveals significant differences. We compared export statistics for logs and sawn wood as declared by Zambia to the Food and Agriculture Organisation of the United Nations (FAO), with data from Chinese Customs. What leaves Zambia as sawn wood seems to arrive in China as logs. It seems clear that Mukula, which is largely exported in logs often declared about 3,000 m<sup>3</sup> for an approximate value of US\$ 900,000, while China declared imports of about 61,000 m<sup>3</sup> for an approximate value of US\$87 million”, reads the CIFOR report.*

*Dear relatives, no matter how weak a Country’s customs unit and revenue authority can be, there is no way 95% of a commodity can leave the Country undetected. This can only be made possible through collusion among responsible Government officials or by a directive from a very powerful office in the land.*

*It is embarrassing to our Government Officials that Chinese who are being vilified for corruption kept their end of the Mukula movement clean by making genuine declarations to their State authorities, while the cartel in Zambia was conniving to manipulate documents and steal from itself. This is what happens when selfish leaders are in charge of a Nation, they care less about anyone else but themselves.*

*We insist that it is impossible that the smuggling of Mukula could have been done without the involvement of senior Government Officials in Zambia using third parties and proxies. In fact, this is what the 2017 Financial Intelligence Centre (FIC) money laundering trends report revealed.*

*It stated that Zambia recorded K4.4 million in suspicious cash transactions linked to illicit trade in timber. The FIC went further to reveal that financial transactions amounting to K872 million linked to such illicit activities were done in personal bank accounts as opposed to business accounts, in order to evade tax.*

*“We noted an increase in the number of currency transaction reports involving timber sales and they were mostly performed by individuals in regions where the prohibited Mukula tree is being harvested. This raised suspicion of Mukula traders declaring their sales as proceeds from other types of timber as opposed to Mukula tree. During 2017, a total of K4,454,726 was reported as timber-related currency transactions. It was further observed that the deposits in the accounts of individuals involved in the timber trade were done by third Parties, mostly of Asian and Zambian origin”, stated FIC in its 2017 Money Laundering/ Terrorist Financing Trends Report.*

*What more is left to tell about the smuggling of Mukula? Researchers have made their case; money laundering reports are out there for all who need proof, what Government Officials have said in the past in defence of their activities has also been brought to the fore.*

*With this at the back of the mind, the revelations in the recently released Environmental Investigation Agency (EIA) report must now make sense to discerning readers. We have spent this entire*

week helping to connect the dots for people to read between the lines and form their own opinion regarding the allegations in the EIA report.

Our opinion on the matter is simply that: if it looks like a duck, swims like a duck, and quacks like a duck, then it certainly is a duck.”

*(Emphasis theirs)*

3.15 Further, the Plaintiffs asserted that on the 17<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published another ‘Opinion’ titled, **“Chiefs aiding theft of wildlife, timber, minerals and land”**. This ‘Opinion’ reads: -

*“This Country is now officially broke! It has been bankrupted. The thieves in Government have stolen all there was to be stolen and there is no money left to steal. With the Treasury now empty, they have turned to natural resources. What is there to steal now is land, wildlife, minerals and forest products, and in all these things, the people in front facilitating the criminality are Chiefs, the traditional leaders who call themselves the custodians of the land.*

*Chieftainess Nkomeshya Mukamambo II of the Soli people of Lusaka Province has no kind words for people in Government who want to use their influence to grab traditional land and abuse it for personal benefit. The ruler of the Soli land says the ruling Party wants her dead because she is a thorn in their flesh; she is a hindrance in their motives.*

*“There is bias in distribution of the wealth of this Country. To all the people of Zambia, I stand to speak and I will not withdraw. I will speak and I will continue to speak. I want an explanation*

*from the high authorities. What was the reason for dispatching 40 buses all the way from Lusaka to come here to come and disrupt my ceremony with more than 600 cadres, what was the reason? Am I so big that a contingent of 40 buses could descend upon me, to come and kill me? If it is to kill me, even one person can kill me, I am a woman, very small in height, small in body, I don't even need two bullets to finish my life", said the Soli Chief. Such traditional leaders deserve respect and support from all well-meaning citizens because they are fighting for the good of the Country. Chieftainess Nkomeshya has refused to allow the powerful people in Government to take and abuse her land, using the same system of embracing Chinamen and their illicit businesses. But other Chiefs have chosen to be accomplices.*

*We are seeing a very worrying pattern of wealth accumulation among traditional leaders in areas where natural resources, such as Mukula, are in abundance or where gold deposits have been found. Some of our Chiefs have no attachments to their subjects anymore; they are only interested in land, precious stones, timber and minerals. Their new adopted subjects are Chinese Investors who give them cuts from the theft of these resources.*

*This is what is happening now in Zambia. Forget the money, the balances are not there. The Treasury has been wiped clean! Money, now, is in resources; land, precious stones, timber and wildlife, and Zambians must open their eyes to see what is happening to these resources and question the role those traditional leaders play in their administration.*

*Chiefs occupy a certain place in our society where they do not get enough scrutiny. They are considered sacred to an extent, and accusing them of stealing is simply taboo. So, they do many*

things as they please while hiding from the law, aided by their political connections. When we look critically at the previous money laundering trends reports, we will see that some Chiefs, though not named, have been implicated in the biggest fraud cases. But the public ignores the Chiefs' involvement in these cases and only focus on the politicians. This should not be the case. Traditional leaders need to be as accountable as any other leader.

Chiefs need to be reminded of their mandate. They should not hide behind royal blood to steal without being called out. Zambia belongs to every Citizen, and Chiefs, like Politicians, serve at the mercy of their subjects.

If they own the land, they own it on behalf of the people in the chieftom. They do not have the power to sell it for personal gain. This also applies to wildlife, forests and minerals found in their settlements.

Being a Chief is a privilege and not a licence to steal with impunity. Chiefs who involve themselves in criminal activities, such as the smuggling of Mukula, will be called for what they are. A thief is a thief, regardless of what throne they sit on. The propensity for wealth among our traditional leaders is leading them to commit crimes and this is an embarrassment to the Country's royal establishment.

Chiefs are there to look after our resources, not to LOOT our resources. They must be vigilant and guard against bogus investors who do not bring developmental benefits to the Country. Politicians have shown greed over land and wanton abuse, and if Chiefs are proving to be as destructive, they should

not ask Zambians to back them on their call to preside over the administration of land.

*The House of Chiefs must critically look into the conduct of its members and subordinates. How different are they from politicians if they are also facilitating crimes like this? How will they gain the respect of the people if their faces are appearing among members of the Mukula smuggling cartels? Shame on all greedy royal highnesses! (Emphasis theirs)*

3.16 Furthermore, it was asserted that on the 18<sup>th</sup> December, 2019, the 2<sup>nd</sup> Defendant published an ‘Opinion’, titled **“How processed Mukula comes back to Zambia”**, which short but libellous ‘Opinion’ reads: -

*“The people of Zambia have been asking: where has the Patriotic Front been getting all the campaign materials from which they have been using to bribe voters? Where has the money been coming from considering that the ruling Party has no known registered viable business? How is it that only Patriotic Front, as a Party has access to these funds now, which they did not have when they were in opposition? Well, thanks to the Environmental Investigation Agency, now we know that these resources can be traced all the way to the Mukula smuggling saga that has been laid bare. It is no coincidence that China poured in a lot of campaign materials for the Patriotic Front in the last general election and they continue to do so throughout the by elections. We saw truckloads of imported Patriotic Front campaign cargo from China but no one in the ruling Party was able to explain the source of funds. Now we know how Mukula comes back to Zambia after it is processed in China! If Patriotic Front insists*

*that this is not Mukula money, let them produce invoices and receipts for these purchase transactions.” (Emphasis theirs)*

3.17 The Plaintiffs averred that on 19<sup>th</sup> December, 2019, at page 6 of the said ‘News Diggers!’, the 2<sup>nd</sup> Defendant published another libellous Article titled **“Dismissing Mukula report as fake news disheartening – EIA”**, which article reads: -

*“The Environmental Investigation Agency (EIA) says it is disheartening that President Edgar Lungu dismissed its report on the Mukula cartel as fake news because that drives away attention from the real problem.*

*And the EIA says it is bogus to allege that the NGO collaborated with some opposition political parties to produce the report because it is nonpartisan. Meanwhile, the EIA has tipped Government on how to end the illicit Mukula trade.*

*EIA project manager Holly Wood was speaking to Hot FM during the breakfast show.*

*Asked to react to President Lungu’s remarks that the EIA report was fake news and Lands Minister Jean Kapata’s threats to sue News Diggers, Wood said that was diverting attention away from the real problem.*

*“We are certainly disheartened by the fake news statements calling into question the thorough research and evidence. Such statements drive attention away from the real problem, the trafficking of Mukula, the devastation of Zambian forests and the devastating impact this has on the livelihood of Zambian communities. Zambia has one of the highest deforestation rates in Africa and in the world. Like a forest governance serves to*

*benefit only a few well-connected people in high places while it robs Zambians of their natural resources without benefiting the Country and its citizens. It is critical that this issue is investigated and addressed immediately before it is too late”, Wood said.*

*“Several sources explained to us for each container, about US\$15,000 was paid in bribe and other informal fees in order to transport and export the Mukula. As you probably saw, we estimated that over 500 containers were exported each year from Zambia. A US\$15,000 appeared for each container, the 500 containers represent a conservative estimate or approximately US\$7.5 million paid in bribes and arbitrary fees”*

*And EIA refuted allegations that it collaborated with an opposition Party to produce the report.*

*“I want to be clear that EIA in no way partnered with nay political Party in this investigation. This is unfortunate and spurious claim that diverts attention from the key problem; the pillaging of Zambia’s forest and the substantial amount of money that appeared to be in the pocket of a few individuals in positions of power instead of being used to solve the key socio economic problems and the environment crisis that impacts everyone. EIA is a nonpartisan organisation in Zambia as we everywhere else in the world. We have worked for more than 30 years in Countries around the globe with a goal of protecting the environment... and we will continue to do so”, Wood said.*

*Meanwhile, Wood suggested how Government could end the illicit Mukula trade.*

*“We reviewed the apparent involvement of high level officials and Politicians in Mukula trade. We certainly hope that the issues*

raised in the report will receive the serious and transparent investigations needed to bring more truth to light so that actions can be taken to end the illicit and unsustainable trade. We understand that the Zambian people have a great interest in protecting their natural resources and we hope that our report will serve to reinforce those voices championing the Zambian forests. There is also a lot of effort to meet the challenges of unsustainable and illegal timber trade. In this regard, we can look specifically to the new CITES listings to help solve the problems. With all Countries that have imported Mukula are now taking an active role in enforcement. We are thinking, in particular, an opportunity for China at the moment by far the largest market for Zambian Mukula, if China implements its CITES obligations, it cannot only change the trafficking of Mukula but end it for good”, Wood said.

She explained that the report was a result of a two-year long investigation.

“The Mukula cartel report was the result of a two-year investigation conducted by EIA US according to our usual methodologies. We firstly analysed publicly available data and information about the trade of Mukula available and extremely threatened species. We also examined already existing legislations related to Mukula, its impact and its efficacy. Our analysis shows that the timber trade between Zambia and China which had exploded in 2014 increasing six times from 2013 to 2014 alone was still extremely high in 2018 worth over US\$60 million. We observed that the spike in trade was occurring despite the ban, trade and harvest on Mukula that had been enacted in 2017. So clearly, something was not right. At the same time, we observed voices growing within Zambia from

*citizens to local Organisations and even from some Parliamentarians. These voices were seeking to raise awareness about frightening Mukula trade this led us to believe that a deeper investigation was needed in order to determine if trade in Mukula was still occurring in violation of the existing ban and also how this could happen and who was benefiting from it”, Wood said.*

*“We went under cover and gathered unprecedented documentary evidence regarding the illicit trade we then prioritized the preparation and release of our report to coincide with the CITES listings to Mukula which came into effect at the end of November. The CITES listings is intended to prevent commercial extinctions of the species as we wanted our report findings to have the maximum possible impact to help save the species and to bring this evidence to light for the Zambian people.” (emphasis theirs)*

3.18 The Plaintiffs averred that all the 1<sup>st</sup> and 2<sup>nd</sup> Defendants’ Articles and ‘Opinions’ above, are related or refer to the 3<sup>rd</sup> Defendant’s Publication. The Plaintiffs averred further that in the eyes of ordinary members of the public, the Plaintiffs have suffered ridicule, odium, contempt and embarrassment, generally, as the Articles, ‘Opinion’ and Publications complained of herein meant and were understood to mean that: -

- (i) The Plaintiffs are corrupt;
- (ii) The Plaintiffs do not care about poor Zambians;
- (iii) The Plaintiffs are thieves;

- (iv) The Plaintiffs are morally bankrupt;
- (v) The Plaintiffs are not fit to hold public office;
- (vi) The Plaintiffs do not care about the environment;
- (vii) The Plaintiffs are anti-development;
- (viii) The Plaintiffs are selfish; and
- (ix) The Plaintiffs engage in rigging elections, and all manner of electoral malpractices.

3.19 The Plaintiffs vied that the aforesaid Articles, 'Opinions' and Publications by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are false and highly malicious. It was further vied that the general language used in the Articles, Publications and 'Opinions' are beyond fair commentary.

3.20 The Plaintiffs asserted that their characters and reputations have been injured and that all efforts to resolve the issues have failed.

3.21 By the Defendants' Defence, the Defendants averred, *inter alia*, that the 3<sup>rd</sup> Defendant is an investigative corporate body whose mission is to protect endangered Wildlife, Forests and the Global Climate and to operate at the intersection between increasing global demand, trade, and the accelerating loss of natural resources and species.

3.22 The Defendants admit that after extensive and thorough investigations, the 3<sup>rd</sup> Defendant produced a report

entitled **“Mukula Cartel: How Timber Trafficking Networks Plunder Zambian Forests”** (“the Report”) referred to in the Statement of Claim and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants published Opinions and Articles citing the said Report.

3.23 The Defendants admitted producing a Report entitled *“Mukula Cartel: How Timber Trafficking Networks Plunder Zambian Forests”* and averred that before publishing the Report, the 3<sup>rd</sup> Defendant sought the reaction of the Plaintiffs through the Zambian Embassy, but did not get any feedback from them. In the same fashion, on 6<sup>th</sup> December, 2019, in the morning following the release of the Report, an effort was made by the 2<sup>nd</sup> Defendant to get a reaction from the Plaintiffs and their reaction, denying the said allegations was published.

3.24 The 3<sup>rd</sup> Defendant admitted portions of the Plaintiffs’ Statement of Claim and asserted as follows: -

- i. It is true that high profile figures in the Patriotic Front Government orchestrated and facilitated massive trafficking of Mukula Timber. In fact, the Patriotic Front Government banned the trade in Mukula to exclude duly licenced traders and allow only those in the then Patriotic Front (“PF”) Party Government and their close associates to freely trade in Mukula and other endangered timber species, hence the term “Mukula Cartel”;*

- ii. *That the Plaintiffs and their associates were named by various traders to be involved in the illegal trade of Mukula;*
- iii. *That a housing complex has been built and plots of land allocated in Forest Reserve Number 27 in Lusaka and that the 2<sup>nd</sup> Plaintiff and Tasila Lungu are beneficiaries;*
- iv. *That the 1<sup>st</sup> Plaintiff received huge amounts of money from Chinese traders connected to Mukula trade and used that same money to purchase property in Forest Reserve Number 27.*

3.25 The Defendants denied that the Article reproduced in the Plaintiffs' Statement of Claim is defamatory and averred that the said Article is a mere publication of a Statement made by the former President Edgar Chagwa Lungu denying any involvement in the Mukula trade with no allegations or adverse references made to the Plaintiffs.

3.26 The Defendants denied that the Article reproduced in paragraph 19 of the Statement of Claim is defamatory and averred that the contents of the said Article are true in statement and fact and a fair comment on a matter of public importance. The Defendants further asserted as follows: -

- i. *That the general public was convinced that some Government Ministers, State House Officials and*

close associates of former President Edgar Lungu, who was then President of the Republic of Zambia were enriching themselves from the illegal trade in Mukula;

- ii. That *Zambian Police Officers and members of the Zambia Defence Forces were being abused to facilitate the smuggling of Mukula, while arresting and beating up those who attempted to expose the cartel. In fact, the Zambia Association of Timber and Forestry Based Industries (ZATFBI), on various occasions, wrote to the office of the 2<sup>nd</sup> Plaintiff, inter alia, to complain about the brutalisation of their members by the Police and the Military, and the unjust confiscation of their legally harvested Mukula;*
- iii. That *Cabinet Ministers and State House Officials connected to the Mukula trade, used surrogates and/or fronts in the smuggling business;*
- iv. That *some vigilant Zambian Youths intercepted trucks carrying illegal Mukula logs and were unfairly treated by the Patriotic Front Government and incarcerated;*
- v. That *the trucks carrying Mukula belonging to Emmanuel Simangolwa were parked at Garden Police in Lusaka. When the Police were contacted*

to explain the suspicious Mukula laden trucks, their spokesperson Esther Mwaata Katongo said the matter was being investigated, but the findings have never been revealed to the public to date;

- vi. That the 2<sup>nd</sup> Plaintiff signed a contract with Timber Producers Association of Zambia President Charles Masange's Company to make chalets for her in Kabompo and that the payments for this contract was to be all kinds of confiscated timber including Mukula. It will also be shown that Mr. Masange was given Police escort by the Patriotic Front Government, to move the timber from Chirundu to his processing plant in Makeni, Lusaka, at the time, when there was an alleged ban of trade in Mukula.

3.27 The Defendants deny that the Articles reproduced in the Statement of Claim are defamatory of the Plaintiffs and stated that the Plaintiffs will be put to strict proof thereof. The Defendants averred that these were opinions and fair comment on a matter of public interest, arising from the revelations made by the then Home Affairs Minister Honourable Stephen Kampyongo, who disclosed on national television that criminals who smuggle Mukula liked using his name and that of the 2<sup>nd</sup> Plaintiff to smuggle Mukula. It was averred that the Opinion raised questions as to why the said criminals were using their names and not any other Minister or Government Official.

3.28 The Defendants averred that the Articles complained of were true in statement and fact and that they will show at trial that the Patriotic Front (“PF”) Government, of which the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were part and with which Tasila Lungu was associated, was indeed a corrupt Government.

3.29 The Defendants denied that the Opinion reproduced in paragraph 22 of the Statement of Claim is defamatory of the Plaintiffs and stated that the Plaintiffs will be put to strict proof thereof. The Defendants asserted that the 2<sup>nd</sup> Plaintiff disclosed in Parliament, in February, 2018, that ZAFFICO was selling Mukula at less than the market price, and that the money realised from the illegal sale of Mukula was given to Kawambwa Tea Company Limited, without first remitting the proceeds to the Zambian Government’s Treasury through the said Treasury Account known as Control 99. It was averred that it is also a fact that the 2<sup>nd</sup> Plaintiff authorised the said illegal transaction.

3.30 The Defendants averred that it was established by the Centre for International Forest Research (“CIFOR”), that smuggled Mukula was exported from Zambia with falsified declarations and that, China in fact imported more Mukula from Zambia than what Government authorities had declared and recorded. Zambia declared to have exported 3,000m<sup>3</sup> of Mukula logs valued at US\$900,000.00 in 2016, while China declared Mukula imports from Zambia of about 61,000m<sup>3</sup> for an approximate value of

US\$87 million. The Defendants also averred that the Financial Intelligence Centre (“FIC”), reported in its 2017, money laundering/terrorist financing Trends Report that Zambia recorded ZMW4,454,726.00 in suspicious cash transactions linked to Mukula trade. It was averred that this Opinion was fairly published on a matter of public interest and it cannot be libellous or defamatory of the Plaintiffs.

3.31 The Defendants averred that, it is proven fact that some Chiefs in Zambia have been involved in the smuggling of Mukula and questionable dealing in land and other natural resources. The Defendants denied that the Opinion reproduced in paragraph 26 of the Statement of Claim is defamatory of the Plaintiffs and stated that: -

- i. The Patriotic Front Party, of which the Plaintiffs were part, used to get its political party funding from corrupt activities, including the smuggling of Mukula;*
- ii. The Patriotic Front Party spent huge and unprecedented volume of money on campaigns across the Country that cannot be accounted for;*
- iii. The Patriotic Front Party campaign materials were imported from China where the smuggled Mukula was sold. It will be shown at trial that the 2<sup>nd</sup>*

*Plaintiff gave export permits for Mukula to Chinese companies that were friendly to the Patriotic Front.*

3.32 The Defendants deny that the Report, Articles and Opinions meant or were understood to mean or were capable of meaning in their natural and ordinary meaning of the things alleged by the Plaintiffs, and stated that the Plaintiffs will be put to strict proof thereof. The Defendants added that in so far as the words complained of meant that there were reasonable grounds to suspect that the Plaintiffs were involved in the Mukula Trade, which are true in substance and in fact. The Particulars of fact were set out as follows: -

- i. The Patriotic Front Government, through the 2<sup>nd</sup> Plaintiff as Minister of Lands and Natural Resources illegally banned the legitimate trade in Mukula under the pretext that Mukula was among the endangered species when the same Government at the same time was permitting the alleged endangered species to be exported in its log form by themselves and their close associates;*
- ii. The ban did nothing to protect Mukula trees but provided a cover for the then President Edgar Lungu and his associates and various Government Ministers to trade in Mukula;*

- iii. *Some Chinese traders were kept and worked out of Zambian Military Barracks to shield the illegal trade in Mukula;*
- iv. *The Zambia Association of Timber and Forestry Based Industries (ZATFBI) commenced an action under Cause Number 2017/HP/1016, challenging, inter alia, the said Mukula trade ban. The Judge in that case ruled that the ban was illegal and it should be reversed. However, the 2<sup>nd</sup> Plaintiff together with the Government of that time, ignored the said Judgment and kept the ban while continuing to trade in Mukula with their close associates;*
- v. *The Patriotic Front Government, through the 2<sup>nd</sup> Plaintiff, used State power and the abuse of the Police, Zambia National Service and other security wings to confiscate legally obtained Mukula from various Zambian licence holders and put it in the care of ZAFFICO where it was looted;*
- vi. *ZAFFICO was being used by Patriotic Front Government officials, including the 2<sup>nd</sup> Plaintiff to smuggle Mukula under the pretext that they were selling the confiscated Mukula;*
- vii. *The FIC reported that in 2018, they received Suspicious Transaction Reports (“STRs”) related to*

*Mukula valued at ZMW2,156,000.00, despite the ban on Mukula at the time. According to that Report, many of the individuals in the illegal trade of Mukula established other businesses through the proceeds;*

*viii. The 1<sup>st</sup> Plaintiff received the sum of US\$180,000.00 into his Barclays Bank Account in or about January, 2019, from a Chinese Mukula connected company and used that same money to among other things, purchase property in Lusaka;*

*ix. The 2<sup>nd</sup> Plaintiff gave instructions amounting to a direction to smuggle Mukula out of the Country. The said instructions, issued to the Principal Forestry Officer in Kabwe, Central Province was for a Chinese Company called Zheli Wood to be allowed to export 18 containers of Mukula logs to China. This instruction from the 2<sup>nd</sup> Plaintiff was given during a period when she herself had announced a ban on Mukula trade. In the said instruction, the 2<sup>nd</sup> Plaintiff gave instructions that the Mukula logs should be moved out of the Country using any exit except Nakonde Border, which at the time had been under watch from citizens who had been on high alert of Mukula smuggling. Furthermore, permits were granted by the 2<sup>nd</sup> Plaintiff to the *Zambian Association of Persons with**

*Disabilities (“ZAPD”) where a list of beneficiaries was made but who were unaware of this. Huge tracks of Mukula were cleared by the Zambian military under the pretext of giving land to the beneficiaries. The proceeds from the export of this Mukula were not given to the alleged beneficiaries;*

- x. The 2<sup>nd</sup> Plaintiff gave permits to Marcopolo Tiles Limited of the Wonderful Group of Companies to trade in Mukula even during the ban;*
- xi. The 2<sup>nd</sup> Plaintiff also had very close ties with Sikale Wood, a company that trades in wood products including Mukula;*
- xii. The 2<sup>nd</sup> Plaintiff further amassed various properties and huge sums of money during her tenure as Minister;*
- xiii. The ZATFBI in several letters written to the National Assembly in 2017, cited top Government officials and their families being involved in illegal Mukula trade;*
- xiv. Smugglers used the names of Government officials whom they knew were linked to Mukula business, including the Plaintiffs, to smuggle Mukula. These smugglers using the Plaintiffs’ names were neither arrested nor prosecuted and the Plaintiffs had done nothing to stop criminals from using their names.*

- 3.33 The Defendants, averred that where necessary, they would rely on **Section 6 of *The Defamation Act, Chapter 68 of the Laws of Zambia***. The Defendants further averred that they would also rely on the defence of fair comment on a matter of public interest, namely trade in Zambian Mukula.
- 3.34 The Defendants denied that the Plaintiffs are entitled to any of the claims outlined in the Statement of Claim or at all.
- 3.35 By the Plaintiffs' Reply, it was averred that the generalisation of the Defence, and the reference therein to persons and organisations that are not party to these proceedings confirm the Defendants' malice herein. It was further averred that the Defendants shall be subjected to strict proof of their *affirmative* assertions contained in their joint Defence.

#### **4. EVIDENCE AT TRIAL**

- 4.1 At trial, **PW1** was **Given Lubinda**, the 1<sup>st</sup> Plaintiff herein, who is a Politician and Business Man. He testified, *inter alia*, that he had been in Business for close to 40 years and had been a Politician since 1988. He stated that he was in the business of Real Estate Development and Management, Farming and Training.
- 4.2 PW1 narrated the progression of his political career, which included his membership to the Central

Committee of the PF. He stated that he served the people of Kabwata Consistency as a Member of Parliament for four consecutive terms, making a total 20 years, from 2001 until May 2021.

- 4.3 PW1 affirmed that for a period of 14 days, starting from 6<sup>th</sup> February, 2019, to 19<sup>th</sup> December, 2019, the Defendants caused 10 Publications, both in hard copy and soft copy. He stated that of these Publications, seven were Opinions; four were Articles; and that one was a Report. PW1 further stated that these Articles, Opinions and Report cast bad light on him.
- 4.4 PW1 asserted that the Article of 6<sup>th</sup> December, 2019, written and published by the 1<sup>st</sup> Defendant, referring to a Report produced by the 3<sup>rd</sup> Defendant, was titled "*Lungu Tasila in Mukula Smuggling*". He referred the Court to pages 37 to 38 of the Plaintiffs' Bundle Documents containing the said Article and stated that the Article referred to him, among others, as being involved in the illegal trade of Mukula. He further stated that the Article has a graphic representation, showing a matrix with drawings of five known people, namely Former President Edgar Lungu, PW1, Jean Kapata, Tasila Lungu and the Chief. He also stated that it had 5 unidentifiable imprints of faces and had a logo of ZAFFICO at the top of it. PW1 asserted that this

representation is what the Article was referring to as the Mukula Cartel.

- 4.5 PW1 referred the Court to page 38 of the Plaintiffs' Bundle of Documents and avowed that the Article detailed that EIA Investigators were told by a relative and Business Partner of PW1 that PW1 is also involved in the Mukula Trafficking. In addition, PW1 avowed that the informant stated that PW1 was involved in trading Gold and Diamonds from Angola. PW1 affirmed that this Article was not only false but extremely malicious and defamatory.
- 4.6 PW1 referred the Court to pages 39 to 68 of the Plaintiffs' Bundle of Documents and testified that it is a Report published by the 3<sup>rd</sup> Defendant titled "*Mukula Cartel...*", the cover of which was reproduced by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their Newspapers of 6<sup>th</sup> December, 2019. He further referred the Court to page 70 of the Plaintiffs' Bundle of Documents, which contained an Opinion published on Wednesday 11<sup>th</sup> December, 2019 and testified that the author of this Opinion based it on falsehood and cast bad light on the people they had chosen to refer to as the Cartel.
- 4.7 PW1 went on to refer to the 2<sup>nd</sup> Defendant's Opinions dated 12<sup>th</sup> December, 2019; Friday 13<sup>th</sup> December 2019; 16<sup>th</sup> December, 2019; and 17<sup>th</sup> December, 2019, and stated that the remarks in these Opinions were unfair,

false, malicious and damaging. It was PW1's testimony that the Reports by the 3<sup>rd</sup> Defendant and the numerous Articles and Opinions by the 2<sup>nd</sup> Defendant led to some people making comments. He stated that one such comment is at page 79 of the Plaintiffs' Bundle of Documents, which shows a publication by Lusaka Times, written by Field Ruwe, on 27<sup>th</sup> January, 2020.

- 4.8 PW1 referred the Court to a flash disk containing a Video recording of President Hakainde Hichilema, who at the time was leader of the opposition party UPND and stated that the recording shows the effect of the Defendants' Publications on the right-thinking members of society. PW1 further stated that the recording indicates how many right-thinking members of the society interpreted the 3<sup>rd</sup> Defendant's Report in connection with the Opinions and Articles covered by the 2<sup>nd</sup> Defendant and aided the anger developed against those named in the Reports, Opinions and Articles by the Defendants.
- 4.9 It was PW1's testimony that he had never associated himself with Mukula traders nor received any money in connection with the trade of Mukula from any Chinese firms or any company trading in Mukula.
- 4.10 PW1 affirmed that he had received money which he could explain and stated that he had an account held with Absa Bank Zambia, which was credited with sums in US Dollars by two Chinese Companies. According to

PW1, the said sums were credited in relation to a loan agreement that he had entered into with one of the companies. He further stated that none of the two companies are involved in Mukula trading.

- 4.11 PW1 affirmed that the documents in the Plaintiffs' Bundle of Documents confirms the said loan transaction. He referred the Court to page 9 of the Plaintiffs' Bundle of Documents and stated that it was a request for a loan in the amount of \$300,000.00, dated 7<sup>th</sup> November, 2016. He further stated that the document at pages 10 to 14 of the Plaintiffs' Bundle of Documents is a loan agreement dated 18<sup>th</sup> November, 2016, between Highview Investments Limited, in which company he is a Chairman and Quingdao Ruichang Cotton Industries Company Limited, being the lender.
- 4.12 PW1 referred the Court to another document in relation to the loan, at page 34 of the Plaintiffs' Bundle of Documents, which shows the credits to his account. The first credit to his account is dated 6<sup>th</sup> March, 2019, and is \$80,000.00, while the second credit is dated 20<sup>th</sup> February, 2019, in the amount of \$100,000.00. PW1 asserted that a scrutiny of his account will show that the only transactions credited to his account are from these two Chinese Companies.
- 4.13 It was PW1's testimony that the Articles that he placed before the Court were vexatious as they referred to him

as a person who benefits from illegalities, a corrupt person and a crook. He added that the Articles state that he and others named deserve to be humiliated, and create a bad impression that he is not fit to hold public office, and cannot be entrusted with the responsibility of superintending over public resources nor does he have regard to Government.

4.14 PW1 asserted the Video recording shown to the Court, alluded to him being such a bad and uncaring person who would rather see mothers delivering children without the necessary facilities because of greed. He further stated that the Articles stated that he is morally bankrupt and pretentious.

4.15 It was PW1's testimony that as a consequence of these Articles, his long public service has been brought to nothing in the right estimation of people. He stated that the Defendants did not ask him for a comment on the allegations but rather disclosed to the public, thus, denying him an opportunity to exonerate himself.

4.16 It was PW1's further testimony that the 3<sup>rd</sup> Defendant's Report was published on the World Wide Web and is accessible globally. He also testified that the 2<sup>nd</sup> Defendant is a Newspaper that has on numerous occasions contacted him to make comments on matters of public interest, but that at no point did they ask him for a comment on these Articles. According to PW1, it

was clear to him that these Publications were well orchestrated to achieve a given goal to destroy his reputation.

4.17 PW1 avowed that as nothing could be done to repair the damage caused to him, it would only be fair that this Court awards him damages for the various Publications and Articles.

4.18 When cross examined by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel, PW1 testified, *inter alia*, that the interview shown in the Video recording was done on 19<sup>th</sup> December, 2019 and was transmitted live on social media. He stated that the Video was still available online.

4.19 PW1 avowed that his claims were based on Articles, Opinions and Reports contained on pages 69, 70, 72, 73, 74, 75 and 76 of the Plaintiffs' Bundle of Documents. He stated that Mukula was a public issue and that at the time of publication of the said Articles, Report and Opinions, the Plaintiffs occupied public office, and presided over public resources, but not illegal trading of Mukula.

4.20 PW1 conceded that there was nothing wrong with members of the public and media houses expressing their opinions on matters of public interest. However, he asserted that the inference drawn from the Article on

“Cartels” is that it implicated him to be part of the Mukula Cartel, even though the Opinion on pages 70 and 71 of the Plaintiffs’ Bundle of Documents, did not make mention of his name.

4.21 PW1 affirmed that he had been a Member of Parliament for Kabwata for 20 years, but stated that he was not privy to every parliamentary sitting and that he could not remember the statement in Parliament on the proceeds of Mukula by Jean Kapata in 2018.

4.22 PW3 conceded that the Opinion on page 73 of the Plaintiffs’ Bundle of Documents does not directly mention any Government official. He stated that the Opinion on page 75 of the Plaintiffs’ Bundle of Documents mentioned faces appearing in the Mukula Cartel. He conceded that there was no mention directly of the Plaintiffs but stated that it can be determined by inference.

4.23 It was PW1’s testimony that the Opinion on page 76 of the Plaintiffs’ Bundle of Documents is about the PF, which has thousands of members and political officials. He conceded that the document on page 79 of the Plaintiffs’ Bundle of Documents was not published by any of the Defendants.

4.24 When PW1 was referred to pages 10 to 14 of the Plaintiffs’ Bundle of Documents, containing a loan

agreement, PW1 stated that the parties to the loan agreement are Highview Investments Limited, a family company to which he is a chairman, and Quingdao Ruichang Cotton Industrial Company Limited. He further stated that page 34 of the Plaintiffs' Bundle of Documents is a Bank Statement for an account that he held.

4.25 PW1 asserted that the Chinese Company made payment to PW1's account and not to Highview Investments Limited. He stated that the said payment was spent by PW1 and Highview Investments Limited. He conceded that there were no documents before Court to show the transfer of funds from PW1 to Highview Investments Limited.

4.26 It was PW1's testimony that the lender in that loan agreement did not deal in Mukula, but conceded that since he was not a member of the Chinese Company, he was not privy to all their dealings.

4.27 According to PW1, the Articles, Reports and Opinions should be read together and not in isolation. He agreed that when some Articles are read in isolation, they do not single out any Minister and that the video in isolation, does not make mention of PW1 as a crook, liar or that he is not capable of being trusted. However, PW1 stated that when the Articles were made in December, 2019, the PF struggled to attract members.

- 4.28 When cross-examined, by the 3<sup>rd</sup> Defendant's Counsel, PW1 testified, *inter alia*, that Quingdao does not have an office in Lusaka and that their banking business is done from Hong Kong. He stated that Quingdao operates its accounts from a bank in Hong Kong.
- 4.29 PW1 testified that Quingdao lent him money to finance his project that he wanted to undertake and it showed willingness to lend to him, not as Minister, but in his personal capacity of Chairman of the family business Highview Investments Limited. He stated that when one has a relationship with Quingdao they can borrow from it and that he borrowed as a friend of Quingdao to build a student hostel block. When referred to page 9 of the Plaintiffs' Bundle of Documents, containing the letter of request for a loan, PW1 conceded that the purpose for the loan was different. PW1 avowed that he had no government dealings with Quingdao. He conceded that he attended a meeting as Minister of Agriculture with Quingdao, and stated that he was invited as Minister because China-Africa Cotton were presenting donations to various people including him.
- 4.30 PW1 testified that when he collected the money from Quingdao, the plan to build student hostels changed. He stated that he spent US\$150,000.00 on the Construction of the property and office block mentioned on page 9 of the Plaintiffs' Bundle of Documents.

- 4.31 PW1 avowed that he remembered stating that he had received US\$80,000.00, on 16<sup>th</sup> March, 2018, and stated that what he received was actually US\$50,000.00. PW1 further stated that he was not covering up on why he was receiving money from the Chinese. Additionally, PW1 stated that from the amount that he received, he purchased a property in Kingsland, which is located in the Lusaka Suburbs. He also stated that he went back to the Chinese to advise them that he had changed the use of the money lent to him, but conceded that there were no documents to that effect before Court.
- 4.32 It was PW1's testimony that he did not tell the Zambia Revenue Authority about this money that he had received as it was a loan and he was not required to pay tax. He stated that he used some of the money that he had received to purchase properties in Kingsland and that the payment of US\$50,000.00 was for one property.
- 4.33 PW1 conceded that according to the statement on record, he had received US\$150,000.00 and later stated that he had received US\$230,000.00. He agreed that a person who evades taxes is not fit to hold public office and stated that if his dealings with Quingdao proved to be evading tax, then he would not be fit to hold public office. He also conceded that the money that was borrowed from Quingdao by Highview Investments Limited ended up in his personal account and that there

were no documents placed before Court to show how the money moved from Highview Investments Limited to himself.

- 4.34 PW1 affirmed that Highview Investments Limited has an Accountant who prepares his accounts for the purposes of tax affairs but stated that he did not consult the said Accountant when he contracted a loan. He stated that tax returns and payments are made to ZRA.
- 4.35 PW1 asserted that he applied for the loan at Quingdao as he was awaiting funds from Development Bank of Zambia. When referred to page 33 of the Plaintiffs' Bundle of Documents, containing a copy of his loan application to Development Bank of Zambia, which was submitted in December, 2018 and page 10 of the Plaintiffs' Bundle of Documents, containing the loan agreement with Quingdao, dated 18<sup>th</sup> November, 2016, PW1 conceded that two years had passed when he applied for a loan at Development Bank of Zambia. PW1 stated that he repaid the loan to Quingdao in 2022, but conceded that there were no documents before Court to prove this.
- 4.36 It was PW1's testimony that he does not have tax returns before Court because the major source is rentals on which he was paying withholding tax. He stated that the other incomes were not major income earners. He

conceded that he has not been remitting tax on his other incomes but denied evading tax.

4.37 PW1 testified that he was not aware that the Zambia Association of Timber was badly affected by the ban on Mukula, which was effected by the 2<sup>nd</sup> Plaintiff. He conceded that after looking at the Judgment shown at page 164 of the Defendants' Bundle of Documents, he was now aware that the Court held that the ban of Mukula was illegal, but stated that he was not responsible for giving effect to the Judgement. He testified that he had complained about the Article on ZAFFICO in so far as it implicated him. When referred to page 72 of the Plaintiffs' Bundle of Documents, PW1 conceded that his name was not mentioned in that Article.

4.38 PW1 stated that the 2<sup>nd</sup> Plaintiff did not confirm to him that the forfeited goods went to control 99. He stated that the ban on Mukula continued despite the Judgment that said that it was illegal. He further stated that he was not aware that the Chinese were allowed to continue dealing in Mukula during the ban. He also stated that he was not aware of the military escorting Mukula logs to the port.

4.39 PW1 stated that he is not Tasila Lungu's business associate, but in the context in which the Articles were running, him and Tasila were mentioned as members of

the Cartel, and therefore he found the Articles to be defamatory of him.

- 4.40 PW1 asserted that he did not know anyone who would disregard a Court Judgment. He stated that he was aware that the Zambian Government was collecting Mukula from everywhere but was not aware that Zambia National Service was dealing with Mukula nor that ZAFFICO was dealing in exotic and indigenous trees.
- 4.41 PW1 stated that the complaint in the Article at page 72 of the Plaintiffs' Bundle of Documents is on mismanagement of funds, but conceded that he did not find out if there was such mismanagement. He stated that he did not sit down with the 2<sup>nd</sup> Plaintiff before coming to Court, but that she told him that there was an agreement for ZAFFICO to manage the money. PW1 also stated that the 2<sup>nd</sup> Plaintiff had confirmed to him that the money did not go to Control 99.
- 4.42 PW1 stated that he had reported the alleged defamatory statements to the President. He stated that he was not aware of a Military operation to escort Mukula. He further stated that he was not in a position to know if there were Ministers trading in Mukula as not all Ministers reported to him. When referred to pages 71, 72 and 74 of the Plaintiffs' Bundle of Documents, containing the alleged defamatory Articles, PW1 conceded that his name did not appear on those pages,

but stated that he wanted the Court to award him damages for the Articles as the wording “Tasila Lungu’s alleged dirty business associates” referred to in the Articles implicates him as well.

4.43 PW1 testified that in 2001 when he became a Member of Parliament, he was running grocery shops and was trading in liquor, but currently, he leases out properties, runs an entertainment centre and has a number of farms. He stated that some of his assets are run by Highview Investments Limited, while others are run by him and his wife. He also stated that he pays taxes for all his business undertakings.

4.44 It was PW1’s testimony that as a Minister, if he had a contract with Government, he had to declare interest. He stated that Ministers declare assets and liabilities and companies in which they have interests which have business with Government. He further stated that he had declared interest in Highview Investments Limited. He also stated that he did not declare any specific contract with Government in which he had interest.

4.45 PW1 affirmed that the Zambian Government and Highview Investments Limited had a contract for the supply of beef and other agricultural commodities, which were being supplied to Zambia Police and Zambia Correctional Services. He stated that as Minister of Justice he was a supplier to Government, as Highview

Investments Limited and not as Minister. He further stated that in his declaration of interest, there was no information that Given Lubinda or Highview Investments Limited were supplying to Government. He also stated that the Ministerial declaration is only for companies in which one has interest.

4.46 PW1 avowed that ZESCO rented one of his properties at Plot No. 21/27/4586 and that he received monthly payments for it. He stated that Plot No. 150/27/4585, Chilimbulu Road, Chilenje, was leased by Highview Investments Limited, thus he did not declare it. He further stated that he did not hide his dealings with Government when he was Minister and was not required to declare his companies that had dealing with Government.

4.47 PW1 asserted that the maintenance of the rule of law is for other wings of Government and that the Minister of Justice handles the legal matters in Court. He stated that he was the political head for Ministry of Justice and ensured that Government policy is adhered to. He further stated that if there were companies being allowed to trade during the ban of Mukula, the public would be entitled to complain. He also stated that the licenses to deal in Mukula logs were administered at Ministry of Lands where the 2<sup>nd</sup> Plaintiff was Minister and that he was not aware of a company called Wonderful Ceiling or

any Chinese dealing in Mukula. He conceded that it was wrong to favour Chinese over Zambians by excluding them from participating in Mukula during the ban.

- 4.48 PW1 testified that the Mukula Cartel had been created by the 3<sup>rd</sup> Defendant, which wrote about people, including himself, as being part of Mukula, which is his complaint. PW1 stated that he did not know the circumstances in which the Military grabbed the Mukula.
- 4.49 When referred to the Article at page 76 of the Plaintiffs' Bundle of Documents, PW1 stated that despite the Article not mentioning him, it was attacking him as being involved in funding the PF using proceeds from Mukula, which he was not doing. He also stated that he was not funding the PF at that particular time.
- 4.50 PW1 asserted that he had been championing for the people in Mahopo and that when he worked as a leader, he worked for the people. He stated that it was a Korean Company that built his property in Mahopo and that he had declared the properties he owned.
- 4.51 PW1 testified that earlier on he had not admitted that he had not been paying tax for 40 years. He stated that he had explained two positions, being one for himself and the other for the Highview Investments Limited. He explained that for himself, there were no returns as the

tax on the money he earned, was paid in form of withholding tax.

- 4.52 PW1 avowed that the money from the loan was credited to his personal accounts and that it was not recorded in the books of accounts of the company. He then stated that it was recorded in the books of accounts as a share contribution from him. He also stated that the loan from Quingdao was recognised in the Highview Investments Limited books as his share contributions. PW1 conceded that the documents before Court had no statement of transfer of funds from his account to Highview Investments Limited, but denied that he was trying to launder that money
- 4.53 In re-examination, PW1 testified, *inter alia*, that his tax and business affairs were up to date. He stated that he had applied for a piece of land in Mahopo and it was given to him after the due process, thus, there was no abuse by him.
- 4.54 PW1 stated that the Articles from Pages 70 to 74 of the Plaintiffs' Bundle of Documents were based on an Article that was published on 6<sup>th</sup> December, 2019, which is produced on page 37 of the Plaintiffs' Bundle of Documents. He stated that various paragraphs of the Article made reference to him as being involved in the illegal Mukula trading.

- 4.55 PW1 avowed that page 75 of the Plaintiffs' Bundle of Documents was similar to the Articles on the pages he mentioned earlier. He stated that none of the Defendants ever dared to give one an opportunity to exonerate themselves from the insinuations, innuendos or the implication.
- 4.56 He testified that President Hakainde, who is a reasonable person, commented in a manner he did, upon reading a Report of the 3<sup>rd</sup> Defendant and stated that if those allegations were false, those who were named would go to Court. He stated that this is an indication that many other reasonable people understood the Report by the 3<sup>rd</sup> Defendant and numerous Articles by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in a similar manner. PW1 further stated that Mr. Harry Kalaba's report shows that many people of the standing of Mr. Harry Kalaba believe the Report of the 3<sup>rd</sup> Defendant and the Publications by the 2<sup>nd</sup> Defendant to which they included PW1 on the sale of Mukula.
- 4.57 Regarding the loan agreement, PW1 testified that it was a genuine and easy transaction as can be seen from the fact that he even released Title Deeds of his property as security and as can be seen from the fact that he submitted the original Title as security. He stated that this could further be seen from the fact that the financial transaction was transparently done through a highly

reputable bank. He avowed that it is therefore not fair nor correct to make an allegation that these documents are made to cover up an impropriety on his behalf or the part of the other party to this agreement.

- 4.58 PW1 testified that Ministers are not involved in any procurements and that all the various Ministries, in which he was privileged to serve, did not in any way get involved in any tender procedure as that is the responsibility of the Ministerial Tender and Procurement Committees, of which Ministers are not members.
- 4.59 **PW2** was **Jean Kapata**, the 2<sup>nd</sup> Plaintiff herein, who is a Farmer and Politician. PW2 testified, *inter alia*, that the Publications that appeared on the front page of the News Diggers Newspaper, on 6<sup>th</sup> December, 2019, which are shown at page 37 of the Plaintiffs' Bundle of Documents, are what brought her before this Court.
- 4.60 PW2 asserted that her face and name appeared in the Article entitled "*Lungu, Tasila in Mukula Cartel*". She referred the Court to page 37 of the Plaintiffs' Bundle of Documents, containing the said Article, where her name and face appears. PW2 testified that the Publication was very defamatory, injured her persona, her family and the Government. She further testified that the Publication was a fabrication as it is not true that there was a Cartel on Mukula.

- 4.61 PW2 referred the Court to pages 38, 40, 43, 49, 69, 70, 75, 82 and 83 of the Plaintiffs' Bundle of Documents and testified that the documents contained a Report from the 3<sup>rd</sup> Defendant, which referred to the Plaintiffs as members of a Cartel. She stated that she does not own any land under Sunshare as the Report suggested. She also stated that she has never worked with the Police.
- 4.62 PW2 referred the Court to page 70 of the Plaintiffs' Bundle of Documents, which she testified that it contains an Opinion by Diggers Newspaper and stated that she was not aware that some people were using her name to smuggle Mukula logs. She further stated that she had never met the Chief depicted on page 75 of the Plaintiffs' Bundle of Documents. She also referred to page 82 of the Plaintiffs' Bundle of Documents and stated that she had never authorised any Chinese Company or the company known as Zheli Wood to trade in Mukula logs.
- 4.63 In cross examination, PW2 testified, *inter alia*, that she had been a Minister since the PF won the elections. She stated that she served as Minister of Lands for 5 years and during that period, she managed the Natural Resources of Zambia.
- 4.64 PW2 avowed that she remembered signing a **Statutory Instrument Number 31 of 2017**<sup>1</sup>, which banned the exportation of Mukula logs and which has never been

revoked. She stated that as long as it was still in force and under certain circumstances, it was illegal to import, export or transit Mukula logs.

- 4.65 PW2 avowed that there was illegal cultivation of the Mukula logs despite passing the said Statutory Instrument. She further avowed that despite the ban, she allowed the transiting of Mukula logs through an agreement, but stated that she could not remember whether the Statutory Instrument provided for an exception. When shown **Statutory Instrument Number 31 of 2017**<sup>1</sup>, PW2 conceded that it did not provide for any exception.
- 4.66 When referred to page 35 of the Defendants' Bundle of Documents, containing a Statement to the Press that PW2 issued, she testified that some of the 194 trucks were cleared if they had the correct documentation. She stated that those without documentation were seized and given to ZAFFICO to dispose of according to a Cabinet Resolution.
- 4.67 PW2 avowed that the trading of Mukula logs was not done under her authority but through the Central Joint Operations Committee ("CJOC"), which consisted of the President, and security wings, such as the Army, Zambia Airforce and Zambia Service. She stated that there was representation in that Committee from the Ministry of Lands.

- 4.68 It was PW2's testimony that she did not know how the CJOC was created and if it could override the law. She stated that the CJOC was brought in when there was a security concern, as there had been indiscriminate trading of Mukula logs and its possible depletion. PW2 further stated that she did not know the duty of CJOC.
- 4.69 PW2 affirmed that she knew that the Statutory Instrument that she passed was law, but stated that there were also instructions from the Cabinet on how best to deal with the problem of Mukula. She conceded that the Cabinet had no power to issue instructions which were contrary to the law, but stated that before the ban, the Ministry of Lands allowed those with valid permits to finish off their business. She further stated that when Cabinet decided to ban Mukula trading, they realised that there were people who were given a concession as they had valid licences, thus, these were allowed to go on trading in Mukula for the duration of their licences, but no new licences were issued in the period. She asserted that this was a combined decision with Cabinet and not just the Ministry of Lands alone.
- 4.70 When PW2 was referred to a letter produced on page 21 of the Defendants' Bundle of Documents, being a letter of complaint, dated 12<sup>th</sup> June, 2017, from the Zambia Association of Timber and Forestry Based Industries ("ZATFBI"), PW2 who had earlier testified that she was

not the Minister of Lands during that period, conceded that she was the Minister of Lands in that period, but stated that the letter does not show that even before she effected the ban, the traders were being harassed by the Military.

- 4.71 PW2 testified that the letter from ZATFBI was not directly addressed to her and it was not brought to her attention. She stated that the letter on page 29 of the Defendants' Bundle of Documents from ZATFBI, dated 5<sup>th</sup> July, 2017, was addressed to the Director Forestry Department and was written after the ban of Mukula trade. She further stated that she had not seen the said letter prior to this trial despite being hands on at the Ministry of Lands.
- 4.72 When PW2 was referred to a letter dated 14<sup>th</sup> December, 2017, addressed to the Director Forestry Department and authored by ZATFBI, whose subject was "*Release of Impounded Timber*", PW2 testified that she was seeing the letter for the first time. She stated that the Forestry Department dealt with a lot of issues without informing her as the Minister because they had the mandate to do so.
- 4.73 PW2 affirmed that she was aware that a lot of trucks loaded with Mukula logs had been impounded. She stated that at the time, the Secretary General of ZATFBI went to her office, but never addressed the letters to her.

She further stated that the Secretary General made mention of the ban and informed her that the members of his association were of the view that they were not getting anything from the timber industry, thus, they requested for the ban to be lifted, but she referred the Secretary General to the Department of Forestry.

4.74 PW2 avowed that despite the ban, the Mukula trade has continued as those who had valid licences continued harvesting Mukula logs. She added that in some instances, trucks that had legal papers had been impounded to facilitate investigation. She further avowed that of the 472 trucks impounded, 272 trucks were released and that 194 trucks did not have all the documentation. When referred to page 31 of the Defendants' Bundle of Documents, containing a letter from ZATFBI, dated 14<sup>th</sup> December, 2017, requesting the release of timber impounded by the Military and other Government security wings, PW2 stated that if the timber was not released, then there were one or two issues as those that remained impounded were dealt with on a case-by-case basis.

4.75 When PW2 was referred to pages 38 and 40 of the Defendants' Bundle of Documents, containing minutes of a consultative meeting between the ZATFBI and the Ministry of Lands, she testified that in that meeting, the Ministry of Lands stopped license holders from exporting

Mukula logs, and directed that the logs harvested be sold to ZAFFICO, being the entity that would export it. She further testified that the proceeds from these exports were required to be used to revamp Kawambwa Tea Company and were not placed in the Consolidated Account as required by the Constitution. She stated that this was a Cabinet decision.

4.76 PW2 conceded that the decision to hand over the funds to Kawambwa Tea Company was unconstitutional, but stated that she did not know how Cabinet arrived at investing the funds in Kawambwa Tea Company. PW2 affirmed that she was aware of the procedure for allocation of funds to Statutory Corporations and agreed that there was no compliance in this instance. However, she denied that this was misappropriation of funds by Government.

4.77 It was PW2's testimony that she was not aware of any record of transfer of funds from ZAFFICO to Kawambwa Tea Company. When referred to page 192 of the Defendants' Bundle of Documents, containing a Report from the Financial Intelligence Centre ("FIC"), PW2 stated that according to the Report, those dealing in Mukula logs disguised it as ordinary timber and purported that it was coming from the Democratic Republic of Congo. She further stated that the Report indicated that there was an increase in the trade of

Mukula from 2017 to 2019. She asserted that she was seeing the FIC Report for the first time and could not remember if this Report was tabled by Cabinet.

4.78 PW2 asserted that it was wrong for the newspapers to assume that she was aware of this when they had no proof at all. She further asserted that it was wrong for members of the public to question her when the FIC points out the irregularities as she was not connected to these funds.

4.79 It was PW2's testimony that the FIC Report shows that Zambia was undervaluing and giving a wrong reflection of the value of Mukula. She stated that according to the Report, this happened when she was the Minister of Lands. It was her further testimony that the Report was not brought to her attention and that people continued to trade in Mukula despite the ban.

4.80 PW2 denied that the ban was put in place to exclude ordinary citizens. She stated that when the ban was in place, there was a reduction because roadblocks were mounted and manned by security wings.

4.81 PW2 avowed that the ban was put in place after consultations. She stated that the confiscation of Mukula logs was done by CJOC, which is a military defence unit including the Forestry Department.

- 4.82 It was PW1's testimony that the headlines which were coming out of News Diggers Newspapers continuously for almost three days were injurious as they were based on assumptions. She stated that the PF lost an election and the Government was injured due to these Publications.
- 4.83 PW2 affirmed that she had read the 3<sup>rd</sup> Defendant's Report which the 2<sup>nd</sup> Defendant had referred to. She stated that she was not happy with the recommendations in the Report as there was no truth to it. When referred to page 3 of the Defendants' Bundle of Documents, containing the said recommendations, PW2 conceded that there was nothing wrong with the recommendations, but stated that she launched this suit because her name was mentioned many times in that Report. PW2 also stated that she was ready to obey the law in relation to the ban.
- 4.84 PW2 vied that she remembered that the timber traders sued the Ministry of Lands, but only became aware of the Judgment that was delivered on 28<sup>th</sup> June, 2018, after she launched this suit. She stated that she could not do anything about the ban after the Judgment and that the ban has never been lifted. She further stated that she did not ignore the Judgment, but that it was never tabled before Cabinet for discussions. PW2 also

stated that there were circumstances that allowed Cabinet to disregard the Court Judgment.

- 4.85 PW2 testified that she owns 36 hectares of farmland, which is approximately 10 km from Mwembeshi Prison. She stated that she acquired it from some villagers in the area in 2010. She further stated that she owns a house in Roma which was built in 2009. She also stated that she also owns some unfinished flats which she began building around 2014.
- 4.86 PW2 testified that she owns a small plantation of avocado pears in Mungule, which is about 17 hectares and which she acquired in 2015 from villagers. She stated that in Kitwe, she co-owns a house with her siblings who are in the United States of America, where her mother lives. She further stated that on the said plot in Kitwe, there are four flats and a house for her mother. She also stated that the Kitwe plot was acquired between 2012 to 2013.
- 4.87 PW2 avowed that she owns a piece of land in Lufwanyama that she was given during the period that she was a Minister, through the Ministry of Lands at Ndola. She further avowed that she also owns a property in Forest 27 which is approximately 3 hectares and which she acquired through the Ministry of Lands when she was the Minister of Lands. It was her testimony that she had applied for land in Forest 27, even though it was

not advertised but that at the time, Forest 27 had been degazetted from being a Forestry Reserve.

- 4.88 It was her testimony that the public could complain if it was only politicians benefiting from the degazetted Forest Reserve. She stated that she was directing the policy of degazetting but was not responsible for the degazetting. She further stated that the President, at the time, consulted her regarding the degazetting.
- 4.89 PW2 asserted that she was not the only person that was interviewed regarding the land in Forest 27 as there was a list of people from all walks of life. She stated that the list consisted of some Members of Parliament and she was told by the Commissioner of Lands that he had approved the names on the list that she had given him.
- 4.90 In contradiction of her earlier testimony, PW2 avowed that she was not the one who gave the list of names to the Commissioner of Lands. She later avowed that there was no list but application letters. She also avowed that she had been interviewed alone by the Commissioner of Lands, in her office. She conceded that she was the leader in the policy of degazetting Forest 27, where she found herself owning land.
- 4.91 PW2 testified that the Commissioner of Lands did not work under her directives and could override her. She stated that she paid K25,000.00 for the land in Forest

27, which she later sold to the Chinese but could not remember at what price. She later stated that it was sold for K1.4 million.

4.92 PW2 testified that the basis of the degazetting of Forest 27 was that it was surrounded by a lot of infrastructure, built on land which was degazetted a long time ago, thus the forest was already depleted. She further testified that Forest 27 was degazetted, as there was need to give out land to people and prevent unscrupulous people from demarcating the land illegally. PW1 asserted that she was aware that Forest 27 is where the source of Chalimbana River is, which supplies water to Chongwe. She stated that her advice to the President, to degazette Forest 27, protected the river as she advised on 1000 metres being left near the water.

4.93 It was her testimony that generally, the office of the Commissioner of Lands reports directly to the President and did not report to her. She stated that the Minister of Lands gives the Commissioner of Land policy directions on land and many other issues. PW2 testified that she did not know that it was wrong to give land to foreigners and stated that she was not incompetent. She stated that she was not aware of how land was given to Sunshare.

4.94 PW2 avowed that it was the Commissioner of Lands who used to degazette under instructions of the office of the

President. In the same breath and in contradiction, she stated that it was the President that would degazette under her advice as line Minister. She later stated that on degazetting, it was not her who gave advise, but the Commissioner of Lands.

- 4.95 PW2 asserted that she authorised a company known as Sikale to harvest timber because they were adding value by manufacturing furniture and that she gave a statement in Parliament that any Zambian that was dealing in timber had to export it as sawn timber or with value added as furniture. She stated that those that had the correct timber were allowed to export.
- 4.96 It was PW2's testimony that she was not aware that as a Minister she could not derive pecuniary or personal interest or benefit in matters she presided over. She stated that a Minister can derive interest or benefit when presiding over a matter because they are also Zambian. She further stated that, therefore, there was nothing wrong with her getting 3 hectares in Forest 27 even if she presided over the degazetting policy.
- 4.97 PW2 conceded that under the Ministerial Code of Conduct, she could not derive a personal benefit in terms of doing business with Government and that she did not declare interest in the matter of land that she acquired in Forest 27. She also conceded that as Minister, she was not allowed to do transactions with

Government, but stated that there was no law that prohibited her from selling land that she legally got.

4.98 PW2 avowed that she did not declare her assets to the Chief Justice every year as was required by law. She conceded that she ignored the law but had no reason for doing so. PW2 stated that there was nothing wrong with Ministers favouring themselves and that someone who breaks the law habitually is still an upstanding citizen. She further stated that she did not grab the land in Forest 27 and that it was an oversight on her side for failing to declare it.

4.99 PW2 asserted that the 3<sup>rd</sup> Defendant was wrong to say that the Plaintiffs were giving themselves land as influential people. PW2 who conceded that the land in Forest 27 was never advertised, stated that she did not know why the public was not aware of the availability of land in Forest 27. She denied that Forest 27 was degazetted for the purpose of sharing it amongst the Ministers. She further asserted that it was defamation to say that she did not follow the law and stated that if she got a benefit as a Minister without declaring interest or assets, it is not an abuse of office but an oversight.

4.100 It was PW2's testimony that the Articles that were published by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants made her appear as one who does not care about the land. She stated that Forest 27 was not the only one that had been

degazetted over the years. She contradicted her earlier testimony, and stated that the issue of degazetting had nothing to do with her office hence her failure to give correct answers in cross examination. She also contradicted her earlier testimony by stating that she had no position on advising the President on degazetting.

- 4.101 PW2 testified that degazetting Forests is not a policy and that it was a decision that was made. She stated that the President protects the land with the advice of the Minister of Lands. She reiterated that purchasing land in Forest 27 was not an abuse of office on her part.
- 4.102 PW2 asserted that she came to Court seeking damages for defamation. She denied that she belonged to a Government that enforced an illegal ban on Mukula and stated that the permits to export Mukula during the ban were given by the Department of Forestry. PW2 further stated that a Cabinet decision was made to dispose of the illegally harvested Mukula, which was all collected and given to ZAFFICO.
- 4.103 PW2 testified that the Ministry of Lands gave members of the Timber Association a concession. She stated that for those with valid licences, they were given a grace period within which to finish their business, being 6 months from the ban on 13<sup>th</sup> June, 2017, which was extended by another 6 months.

- 4.104 PW2 stated that she does not have any chalets and neither does the Government and that this was an assumption. She further stated that she found abandoned logs when she travelled across the Country. She also stated that she was not just looking at Mukula, but doing ministerial duties.
- 4.105 PW2 stated that Zambia Agency for Persons with Disabilities (“ZAPD”), who were allocated farms where there was Mukula, were allowed to get rid of Mukula as a way of clearing their farms and to export it, notwithstanding the ban. She stated that she did not know if some Chinese got permit to export ZAPD Mukula. When referred to page 98 of the Defendants’ Bundle of Documents, PW2 conceded that the discrepancies in the Report on the value of the Mukula exported was not normal. She stated that ZAPD was an exception as Cabinet needed to help the disabled as they are Zambians.
- 4.106 It was PW2’s testimony that the Mukula from ZAPD farms was given to ZAPD and that she did not know what ZAPD did with it. She stated that it was not her office that allowed them to deal with it, but the Department of Forestry, which also told ZAPD to engage ZAFFICO. She, however, conceded that the Department of Forestry is under the Ministry of Lands and Natural Resources.

- 4.107 PW2 conceded that trading in Mukula logs continued despite the ban, but stated that it was based on the decision of Cabinet and not in her personal capacity. She denied that the Chinese were allowed to trade via ZAFFICO and stated that ZAFFICO decided which companies would sell the Mukula logs found to be illegally harvested.
- 4.108 PW2 denied that the ban was being lifted in certain cases and stated that no party members were involved in the Mukula as she did not allow it. She further stated that she did not know most of the persons dealing in Mukula. She also stated that most of the persons dealing in Mukula came in through the Timber Association and that she did not allow them to trade in their individual capacity.
- 4.109 PW2 asserted that the Mukula ban had nothing to do with the infrastructure she acquired after she became a Minister. She stated that she has ten double storey flats in Roma valued at K7,994,000.00, which she had built on her property following a subdivision.
- 4.110 The Defendants' application for a view of the said property was granted and the Court conducted a view of the ten double storey flats in Roma. PW2 testified that

building two units of flats in a block, including roofing, costed her K250,000.00.

- 4.111 PW2 testified that the wall fence for the 3 hectares of land that she had purchased in Forest 27 did not cost more than K100,000.00, which she paid in cash. She stated that she sold this land as she had a family medical crisis and that the proceeds from the sale were spent in Zambia.
- 4.112 It was her testimony that none of the money that she received went into the banking system. She stated that she received gratuity three times from Parliament and that the last sum received was K1.5 million, which she spent on her property. She further stated that the building of the flats did not stop when she stopped being a Minister as she does not depend entirely on her salary. She also stated that she spent approximately K1 million on the property in Roma and that the construction has since stopped as she is waiting for funds.
- 4.113 PW2 stated that she did not have any information of any Zambian who was allowed to trade in Mukula that was legally harvested. It was her testimony that the land in Forest 27 has nothing to do with the Publication or the matter in Court.
- 4.114 PW2 testified that her farm under the name Amikaji Farming Enterprises is not registered for tax because the

proceeds do not meet the tax threshold. She later stated that the farm was registered and that it has a Tax Payers Identification Number. She further stated that the income from the farm fluctuates and that it made approximately K250,000.00 per month, which includes capital and profit. It was her testimony that with the other activities on the farm, she earns approximately K1,000,000.00 per year, but has not registered for VAT as she is not aware that she is required to do so. She conceded that it was wrong not to pay tax. She stated that she has not declared this business and has no reason for not doing so.

4.115 There was no re-examination conducted and that marked the close of the Plaintiffs' case.

4.116 The Defendants opted not to call any witnesses and closed their case.

## **5. SUBMISSIONS**

5.1 The Parties were given a time frame within which to file their written Submissions. By the Plaintiffs' Submissions filed on 4<sup>th</sup> July, 2024, the Plaintiffs' Counsel cited the definition of defamatory statement by the learned authors of *Halsbury's law of England*<sup>1</sup>, at **page 21, paragraph 42** as follows: -

***“The essence of the defamatory statement is its tendency to injure the reputation of another person. There is no***

*complete or comprehensive definition of what constitutes a defamatory statement, since the word 'defamatory' is nowhere precisely defined. Generally speaking, a statement is defamatory of the person of whom it is published if it turns to lower him in the estimation of right-thinking members of the society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.*

*A person's reputation is not confined to his general character and standing but extends to his trade, business or profession, and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity.* (Counsel's emphasis)

5.2 Counsel also cited the learned authors of ***Halsbury's Law of England***<sup>1</sup>, at **paragraph 39**, as follows: -

*"It is defamatory to charge another with fraudulent, dishonest or dishonourable conduct or motives, or to call a man a villain, swindler, rogue or rascal, or to state that he is not conversant with business ethics. It is a question of fact whether the word "false" was understood to mean "inaccurate" or "fraudulent" when used in the headline "False Profit Return Charge against Society"."*

5.3 Based on the foregoing, it was submitted that all the Articles published by the Defendants were defamatory of the Plaintiffs as they tended to lower the Plaintiffs in the estimation of right-thinking members of society. It was

also submitted that the statements also tended to expose the Plaintiffs to public hatred, contempt or ridicule.

- 5.4 On the presumption of falsity in defamation cases, it was submitted that at common law, in defamation cases, the burden of proof rests on the Defendant to prove that the defamatory statement published is in fact the truth. Counsel stated that English Law presumes in favour of the Plaintiff that the words or publications are false and malicious.
- 5.5 Counsel cited the learned authors of ***Carter-Ruck on Libel and Privacy***<sup>2</sup>, at **page 178, paragraph 9.2**, as follows: -

***“English law presumes, in favour of the claimant, that the words are false and malicious. It is not, therefore, for the claimant to prove that the words published of him were untrue, but for the defendant to prove that the words were true. The presumption of falsity has been justified on the grounds that it is necessary for the proper protection of reputation.”***

- 5.6 Based on the foregoing, Counsel submitted that the foregoing authority establishes that the burden to prove the truth of the defamatory Articles published by the Defendants, between 6<sup>th</sup> December, 2019, and 22<sup>nd</sup> January, 2020, clearly lies on the shoulders of the Defendants.

- 5.7 On the Defendants' failure to prove that the Publications were true, Counsel contended that the decision by the Defendants to waive their rights to adduce evidence establishing the truth and accuracy of the Articles is fatal to their Defences. He stated that the principle of the presumption of falsity has imposed a mandatory obligation on the Defendants to adduce evidence to the effect that the publications were true and accurate.
- 5.8 Counsel submitted that the Defendants opted not to call any witnesses in defence of their cases and relied on the case of ***Khalid Muhammed v Attorney General***<sup>1</sup>. Counsel argued that this case is not helpful to the Defendants' cause as the doctrine of presumption of falsity in defamation cases does not impose any obligation on the Plaintiffs to prove that the Articles published by the Defendants were false and malicious.
- 5.9 On the defence of justification, Counsel cited **Section 6 of *The Defamation Act***<sup>2</sup>, and also cited the learned authors of ***Halsbury's laws of England***<sup>1</sup>, at **paragraph 92**, as follows: -

***“The law presumes that defamatory words are false, and it is for Defendant to satisfy the Court that the statement which is justified, or if it be divisible, so much as is separately justified, is true in substance and in fact...”***

- 5.10 Based on the foregoing, it was submitted that a Defendant has a duty to adduce evidence of the truth when he pleads the Defence of Justification.
- 5.11 Counsel cited a portion in the Defendants' Defence where they pleaded the Defence of Justification and submitted that the Defendants did not adduce any evidence of how the PF was funded and did not adduce any evidence to prove that the 2<sup>nd</sup> Plaintiff gave export permits for Mukula to Chinese companies that were friendly to the PF.
- 5.12 It was submitted that the only inference that the Court should make is that the Defendants did not engage the Plaintiffs with a view to verifying the 3<sup>rd</sup> Defendant's Report. In addition, it was submitted that the Plaintiffs vehemently testified that the Defendants did not engage them in relation to the said Report.
- 5.13 Counsel submitted that the Defendants have lamentably failed to prove the particulars of facts set out in the Defendants' Defence as they opted not to adduce evidence to prove their Defences.
- 5.14 On the Defence of Fair Comment, Counsel cited **Section 7** of **The Defamation Act**<sup>2</sup> and also cited the learned authors of **Carter-Ruck on Libel and Privacy**<sup>2</sup>, who set out the ingredients for the Defence of Fair Comment at **page 209, paragraph 10.4**, as follows: -

***“In order to rely on the defence, the defendant must prove:***

1. *That the comment is on a matter of public interest;*
2. *That the words are comment and not fact;*
3. *That the facts on which the comment is based are subsequently true or protected by privilege;*
4. *That the comment is fair, in the sense that it is one that 'any man, however prejudiced and obstinate, could honestly hold'.*

5.15 Counsel also invited the Court to **page 293, paragraph 704**, of ***Gatley on Libel and Slander***<sup>3</sup>, where the learned authors outline the ingredients of the Defence of Fair Comment as follows: -

*“To succeed in a defence of fair comment, the words complained of must be shown to be;*

1. *Comment*
2. *Fair comment*
3. *Fair comment on some matter of public interest.”*

5.16 Counsel also invited the Court to the case of ***Michael Chilufya Sata v The Post Newspaper and Another***<sup>2</sup>, where the Supreme Court held as follows: -

*“On established principles an allegation could be a comment if it was an inference of fact which could legitimately be drawn from other facts stated or indicated in the publication complained of but where a bold allegation could not be distilled from other facts stated or indicated it could not even be called a comment. It*

*followed that to call a politician and a Minister a political prostitute was clearly defamatory. The Plaintiff in the first action could not be called a political prostitute for joining a party of his choice after the reintroduction of a new political dispensation allowing for the formation of other parties. The allegation was patently injurious to the Plaintiff in his private and personal character and in his political and official character. In the second action the evidence given to support the allegation of greed did not reveal any personal benefit on the part of the Plaintiff and constituted a personal attack upon him. Greed was a personal characteristic and could not have been a criticism of the Plaintiff in any official capacity. Moreover, a fair-minded person could not reasonably infer greed from such facts and the opinion could not represent the honest opinion of the writer. In the third action, the allegations of corruption in the editorial were not justifiable or warranted by the facts available and were indefensible as fair comment since there was little if any comment. It followed that the editorial amounts to flagrant attack on the very core of the personal characteristics and the private and public reputation of the Plaintiff.” (Counsel’s emphasis)*

5.17 In light of the above authorities, Counsel argued that the Articles by the Defendants were published without an attempt to verify the facts and the Defendants’ subsequent conduct is evidence of their irresponsibility.

5.18 Counsel contended that the Defendants had failed to adduce any evidence to prove that the Plaintiffs were

involved in illegal trading of Mukula. Further, it was contended that no evidence had been adduced before Court to link the money received by the 1<sup>st</sup> Plaintiff to the proceeds of illegal Mukula trade. It was therefore argued that in the absence of any evidence from the Defendants, the Defence of fair comment had collapsed.

5.19 On the failure by the Defendants to verify the truth and accuracy of the statements with the Plaintiffs, Counsel submitted that since the Defendants have not adduced any evidence of verification, it is reasonable to conclude that the Defendants did not verify the Report of the 3<sup>rd</sup> Defendant with the Plaintiffs. Counsel cited the case of ***Moving Unit Video Television (T/A Muvi TV Limited) v Francis Mwiinga Maingaila***<sup>3</sup> in support of the foregoing submission.

5.20 On proof of malice, the Plaintiffs' Counsel argued that the Defendants maliciously published the Articles against the Plaintiffs as is evidenced from the Defendants' failure to disclose the source and the names of the persons that were interviewed concerning the 3<sup>rd</sup> Defendant's Report.

5.21 Counsel urged this Court to take judicial notice of the charges in the case of ***The People v Given Lubinda***<sup>4</sup>, which he alleged are similar to the Defendants' allegations in *casu*, that the 1<sup>st</sup> Plaintiff (Given Lubinda) received the sum of US\$180,000.00 into his Barclays Bank account

from a Chinese Mukula connected company, in which the 1<sup>st</sup> Plaintiff was acquitted of these charges.

5.22 In his conclusion, Counsel submitted that libel and damage have been proved and prayed for the reliefs as sought by the Plaintiffs.

5.23 By the Defendants' Submissions filed on 1<sup>st</sup> August, 2024, the Defendants' Counsel submitted, *inter alia*, that the key issue to be determined is whether the Plaintiffs have proved a case of defamation which entitles them to damages as claimed.

5.24 It was submitted that it is trite law that he who alleges must prove and that it is therefore, the Plaintiffs' duty to prove their case, and not the Defendants to prove their Defence. The case of ***Zambia Railways v Pauline S. Mundia and Another***<sup>5</sup> was cited in support of the foregoing.

5.25 Counsel cited the definition of defamation by the learned authors ***Gatley on Libel and Slander***<sup>3</sup> as follows: -

***“Any imputation which may tend to cause a person to be hated or despised.”***

5.26 Counsel further cited the same learned authors of ***Gatley on Libel and Slander***<sup>3</sup>, as follows: -

***“The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. In determining whether words are***

***defamatory, there are two stages, first to decide what they mean and then to decide whether the meaning is defamatory.”***

5.27 On who bears the burden of proof, Counsel cited from said ***Gatley on Libel and Slander***<sup>3</sup>, which states as follows: -

***“In ascertaining whether the words are defamatory or not, the following rules must be borne in mind:***

***(iii) The Burden of proof is on the party who alleges that the words were understood in a meaning other than their natural and ordinary meaning and in that meaning were either defamatory or non-defamatory as the case maybe.”***

5.28 Based on the foregoing, it was submitted that that the Burden of Proof was on the Plaintiffs to show that the Publications by the Defendants were defamatory and had the meanings understood by the Plaintiffs. It was further submitted that the Plaintiffs did not prove their case for defamation despite the Defendants not calling any witnesses.

5.29 Counsel submitted that the Plaintiffs’ case was that Defendants’ Articles, Opinions and a Report injured their reputation, as the words published were understood to mean the following: -

- i. The Plaintiffs are corrupt;*
- ii. The Plaintiffs do not care about poor Zambians;*

- iii. *The Plaintiffs are thieves;*
- iv. *The Plaintiffs are morally bankrupt;*
- v. *The Plaintiffs are not fit to hold public office;*
- vi. *The Plaintiffs do not care about the environment;*
- vii. *The Plaintiffs are anti-development;*
- viii. *The Plaintiffs are selfish; and*
- ix. *The Plaintiffs engaged in rigging elections, and all manner of electoral malpractices.*

5.30 It was submitted that from the evidence on record, it is clear that the Plaintiffs gave meaning to the Publications by the Defendants. It was further submitted that the evidence produced by the Plaintiffs alone was not enough to prove that the meanings were defamatory. Counsel invited the Court to the explanation by **Gatley on Libel and Slander**<sup>3</sup> on what is required to establish defamation, as follows: -

**“Evidence of what the Plaintiff understood the words to mean is inadmissible. The maintaining of the suit depends on what other persons understood them to mean and not what the Plaintiff himself understood them to mean. If words are used which require a particular meaning to make them actionable, and all the hearers understand them as conveying a meaning not actionable, except the Plaintiff, I apprehend an action could not be maintained, as the words did not convey an actionable**

*meaning to the hearers. There would, in such a case, be no publication of actionable words.” (Counsel’s emphasis)*

5.31 Counsel referred to the Supreme Court case of ***Given Lubinda v Edmond Lifwekelo and Another***<sup>6</sup> in support of the submission that defamation is dependent on right thinking members of society, and not on how the Plaintiff felt about the publications.

5.32 Counsel submitted that a claim in defamation cannot be established by the testimony of the Plaintiff only. He stated that defamation is established by the testimony of the right-thinking members of society who should confirm that the publications complained of lowered the Plaintiff in their estimation and made them shun him and hold him in contempt, hate and caused them to avoid or ridicule him. Counsel asserted that the Plaintiff has a duty to call such witnesses to speak to the effect of the words complained of on them.

5.33 On the Plaintiff’s assertion that the burden to prove the truth in the Publications lies on the Defendants, it was submitted that this was a misconception as the Plaintiff still bears the burden to prove that the published words were defamatory. He further asserted that the Plaintiffs cannot transfer the burden to the Defendants.

5.34 Counsel argued that the Plaintiffs failed to prove that the published words were defamatory consequent to which

they have suffered ridicule, odium, contempt and embarrassment. It was therefore submitted that there is no evidence before Court to support the Plaintiffs' claim that the Publications complained of were defamatory. It was also submitted that in the absence of any actionable defamation, there is no requirement for the burden of proof to shift to the Defendants to prove the truth of the Publications.

5.35 It was Counsel's submission that statements by political commentators and politicians, in reaction to the allegedly Defendants' Publications, cannot be a substitute for the evidence of right-thinking members of society, which is a mandatory requirement in this case. Counsel submitted that at the very least, the Plaintiffs ought to have called the authors of those statements so that they could personally state how they felt about the allegedly defamatory Publications and how they perceived the Plaintiffs as a consequence.

5.36 Counsel further submitted that even assuming that the Plaintiffs had called witnesses, their case would still fail because in addition to failing to prove defamation by not calling witnesses to show how they were defamed, the Plaintiffs have also failed to vindicate their character and show that they were upright in their ways and therefore, capable of being defamed in the manner they complained.

5.37 Counsel cited the holding in the case of **Reeves v Associated Newspapers**<sup>7</sup>, wherein the learned authors of **Gately on Libel and Slander**<sup>3</sup> were quoted as follows: -

***“Actions for Libel in a civil Court are not brought to punish the libeller, but to vindicate the character of the libelled. Accordingly, such an action should never be commenced without a careful consideration of all the circumstances... Much will depend on the character and conduct of the Plaintiff. If he is not altogether blameless in the matter, he may well be advised not to bring an action.”***

5.38 Counsel submitted that the Plaintiffs failed to vindicate their characters and that through the 1<sup>st</sup> Plaintiff’s testimony, he proved that the meaning and the imputations of the Publications given by the Plaintiffs is actually true of him and that therefore, the Publications did not injure his reputation as alleged or at all.

5.39 It was Counsel’s submission that similarly, the 2<sup>nd</sup> Plaintiff failed to vindicate her character by her own testimony. Counsel submitted that there was no need for the Defendants to justify anything more, as the meaning given to the Publications has been justified and therefore, the Plaintiffs cannot be said to have been defamed by the Defendants’ Publications.

5.40 On the issue of malice, Counsel submitted that not only did the Plaintiffs not plead malice, they also did not prove it and that therefore, they cannot raise it in submissions.

The case of *Barclays Bank (Z) PLC v Mutambo and Another*<sup>8</sup> was cited in support of the foregoing submission.

5.41 On the issue of proof of the Defendants' Defence, Counsel reiterated that the Plaintiffs did not prove their case in Defamation, as such, the burden did not shift to prove their Defence. Counsel added that in Defamation matters where the Plaintiff has failed to prove his case, the Defendant is entitled to apply to dismiss the action on the ground that there is no case.

5.42 In conclusion, it was submitted that the Plaintiffs have failed to prove their claims against the Defendants by failing to call evidence to show that their characters were lowered in the estimation of right-thinking members of society. Secondly, having given meaning to the words, the Plaintiffs failed to prove that the meanings were defamatory, as through their testimony, they proved that their characters are in tandem with the meanings they gave of the words. Counsel prayed that this action be dismissed with costs to the Defendants.

## **6. CONSIDERATION AND DECISION OF THE COURT**

6.1 I have considered the Pleadings and evidence adduced before me. I have further considered the spirited submissions and authorities cited by learned Counsel, which have made my task considerably more straightforward.

- 6.2 The Plaintiffs herein are seeking damages and interest thereon for alleged libel contained in newspaper Articles and Opinions published by the Defendants, that the Plaintiffs allege depicts them as being involved in the illegal trade of Mukula logs. The Plaintiffs have also sought an injunction to restrain the Defendants from publishing similar alleged libellous and malicious Articles and Opinions relating to the Plaintiffs, punitive and exemplary damages, interest on the said damages, further relief that the Court deems fit and costs.
- 6.3 On the other hand, the Defendants deny that the Articles and Reports complained of are defamatory and assert that there were reasonable grounds to suspect that the Plaintiffs are involved in the Mukula trade and that therefore, the words complained of are true in substance and in fact.
- 6.4 It is settled law that a person who commences a civil action must prove his case against the Defendant in order to succeed in his claim. To that effect, the learned authors of ***Phipson on Evidence***<sup>4</sup>, in **paragraph 6-06**, at **page 151**, state the following regarding the burden of proof in civil cases: -

***“So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issues. If, when the evidence is adduced***

***by all parties, the party who has the burden has not discharged it, the decision must be against him.”***

6.5 Additionally, the standard to which a Plaintiff should prove his case was discussed by the Supreme Court in the case cited by learned Counsel for the Defendants of ***Zambia Railways Limited v Pauline S Mundia, Brian Sialumba***<sup>5</sup>, as follows: -

***“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable...”***

6.6 The facts in this case are that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, on dates spanning from 6<sup>th</sup> December, 2019 to the 19<sup>th</sup> December, 2019, published Articles and Opinions that they were drawn from information in a Report issued by the 3<sup>rd</sup> Defendant. Excerpts of the Report and Articles published by the Defendant were as indicated in the Statement of Claim highlighted in the summary of the Pleadings above.

6.7 The Plaintiffs allege that the contents of the Defendants' Publications described the Plaintiffs as being involved in the illegal trading of Mukula logs. The Plaintiffs further allege that the said Publications were libellous, as in the

eyes of ordinary members of the public, they have suffered ridicule, odium, contempt and embarrassment.

6.8 The Plaintiffs have alleged that the Articles, Report and Opinions complained of meant and were understood to mean that: -

- (i) The Plaintiffs are corrupt;
- (ii) The Plaintiffs do not care about poor Zambians;
- (iii) The Plaintiffs are thieves;
- (iv) The Plaintiffs are morally bankrupt;
- (v) The Plaintiffs are not fit to hold public office;
- (vi) The Plaintiffs do not care about the environment;
- (vii) The Plaintiffs are anti-development;
- (viii) The Plaintiffs are selfish; and
- (ix) The Plaintiffs engage in rigging elections, and all manner of electoral malpractices.

6.9 In response to these allegations, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have admitted to publishing the said Articles and Opinions. Further, the 3<sup>rd</sup> Defendant has also admitted to publishing the Report from which the 1<sup>st</sup> and 2<sup>nd</sup> Defendants drew the information for their Articles. However, in defence to the Plaintiffs' allegations of libel, the Defendants have asserted that their Articles, Opinions and

Report are not defamatory because the contents of the said Articles are true in statement and fact and are a fair comment on a matter of public importance. The Defendants further assert that it is true and a fact that the Report and Articles complained of were true as the PF Government, of which the 1<sup>st</sup> Plaintiff (Given Lubinda) and 2<sup>nd</sup> Plaintiff (Jean Kapata) were part was indeed a corrupt Government.

6.10 On my analysis of the facts and evidence on record, I find that the following are the issues for determination in this matter: -

- i. Whether the Plaintiffs are entitled to damages and interest thereon for the alleged libel contained in the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Articles and Opinions and the 3<sup>rd</sup> Defendant's Report;
- ii. Whether the Plaintiffs are entitled to an order of permanent injunction restraining the Defendants, their Servants and agents from publishing libellous and malicious articles, and opinions relating to them; and
- iii. Whether the Plaintiffs are entitled to exemplary damages and interest thereon.

6.11 I shall address the issues in the manner that they have been identified above, starting with whether the Plaintiffs are entitled to damages and interest thereon for the alleged

libel contained in the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Articles and Opinions and the 3<sup>rd</sup> Defendant's Report.

6.12 From the onset, I shall begin by setting out the legal principals relating to a claim for defamation. The learned authors of **Halsbury Laws of England**<sup>1</sup> define a 'defamatory statement' as follows: -

*“A defamatory statement is a statement which tends to lower a person in the estimation of the right thinking members of society generally or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business... If a defamatory statement is made in writing or printing or some other permanent form, the tort of libel is committed and the law presumes damage.”*

6.13 In the case cited by learned Counsel for the Defendants of **Given Lubinda v Edmond Lifwekelo and Another**<sup>6</sup>, the Supreme Court cited the learned authors of **Clerk and Lindsell on Torts**<sup>5</sup> on the test for determining whether a statement is defamatory or not, as follows: -

*“...whether the matter complained of was calculated to hold the Claimant up to hatred contempt or ridicule. This ancient formula was, however, insufficient in all cases... Lord Atkin in Sim v Stretch applied the test, “would the words tend to lower the Claimant in the estimation of right-thinking members of society generally.” Or (would the words) “likely to affect the person adversely in the estimation of reasonable people generally.” The*

***alternative “or which would cause him to be shunned or avoided” must be added...”***

6.14 The import of the foregoing is that an Article or Publication will be defamatory if its effect is to expose a Claimant to hatred, contempt or ridicule; or lower the Claimant’s reputation in the estimation of right-thinking members of society, generally.

6.15 In the forestated case of ***Given Lubinda v Edmond Lifwekelo and Another***<sup>6</sup>, the Supreme Court went on to state as follows: -

***“Damage to reputation is felt by how right-thinking members of society generally perceive you after the publication, and not how you feel about the publication or the emotions it draws out of you. The public, either shun and hold you in contempt, or hate, avoid and ridicule you, thereby lowering your standing in society generally. For this reason, it is incumbent upon the Plaintiff to lead evidence through his witnesses, the right-thinking members of society, to show that the publication complained of had such an effect on them...”*** (Court’s emphasis)

6.16 From the foregoing, it is clear that to succeed in a claim for defamation, a Claimant must lead evidence to prove that the Publication complained of lowered the Claimant’s reputation in the estimation of the right-thinking members of society generally. Further, the foregoing authority provides that the manner in which the Claimant must

establish the defamation is by bringing witnesses, who are right thinking members of society, to confirm that the Publication of the alleged defamatory statements had such an effect on them.

6.17 Drawing from the foregoing, I shall now proceed to consider whether the Plaintiffs have proved to the required standard that there were defamed and are therefore entitled to damages and interest thereon for the alleged libel contained in the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Articles and Opinions and the 3<sup>rd</sup> Defendant's Report.

6.18 At trial, to prove that he had been defamed by the Defendants, the 1<sup>st</sup> Plaintiff who testified as PW1, stated that for a period of 14 days, starting from 6<sup>th</sup> February, 2019 to 19<sup>th</sup> December, 2019, the Defendants caused 10 Publications, both in hard copy and soft copy. He stated that among the Articles published by the 2<sup>nd</sup> Defendant was one that referred to a Report produced by the 3<sup>rd</sup> Defendant entitled "*Lungu Tasila in Mukula Smuggling*". The 1<sup>st</sup> Plaintiff asserted that the whole Article was referring to him and the 2<sup>nd</sup> Plaintiff as being involved in the illegal trade of Mukula.

6.19 PW1 also referred to an Article published by the 2<sup>nd</sup> Defendant entitled "*How Lubinda Got Paid From Mukula*", which Article refers to both Plaintiffs as being involved in the illegal trading of Mukula logs. He referred to another Opinion published by the 2<sup>nd</sup> Defendant entitled "*Mukula*

*Smugglers are in Government*”, and testified that the Opinion was not made in good faith at all, was malicious and based on falsehood.

6.20 It was the 1<sup>st</sup> Plaintiff’s testimony that the Articles published by the 2<sup>nd</sup> Defendant were referring to him, among others, as being involved in the illegal trade of Mukula logs when he is in fact not.

6.21 PW1 avowed that the Reports by the 3<sup>rd</sup> Defendant and the consequential numerous Articles and Opinions published by the 2<sup>nd</sup> Defendant led some people to make comments. To support this assertion, PW1 referred to a Publication issued by Lusaka Times, done by Field Ruwe, on 27<sup>th</sup> January, 2020. This Publication referred to both Plaintiffs herein as being involved in the illegal trading of Mukula logs.

6.22 PW1 also referred to a Video recording wherein President Hakainde Hichilema, who at the time was opposition party leader, referred to the PF Party as being part of the illegal trade of Mukula logs.

6.23 It was his testimony that the said Video recording demonstrates how right-thinking members of the society interpreted the 3<sup>rd</sup> Defendant’s Report in connection with the Opinions and Articles covered by the 2<sup>nd</sup> Defendant. In the 1<sup>st</sup> Plaintiff’s view, the consequent comments aided the anger that developed against him and those named in the

Reports, Opinions and Articles published by the Defendants.

6.24 It was the 1<sup>st</sup> Plaintiffs' testimony that as a consequence of these Articles, his long public service has been brought to nothing in the right estimation of people. He contended that as nothing could be done to repair the damage caused to him, he is entitled to an award of damages and to punitive measures against the Defendants.

6.25 I now turn to the 2<sup>nd</sup> Plaintiff who testified at trial as PW2. She avowed, *inter alia*, that her claim for damages for defamation (libel) stem from the fact that her face and name appeared in the Article entitled "*Lungu, Tasila in Mukula Cartel*". She testified that the various Publications by the Defendants were very defamatory as they were false and injured her persona, her family and the Government.

6.26 It was the 2<sup>nd</sup> Plaintiff's testimony that the trading of Mukula logs was not done under her authority but through the Central Joint Operations Committee ("CJOC"). She stated that despite the ban, the trade in Mukula logs continued as those who had valid papers continued harvesting Mukula logs.

6.27 The 2<sup>nd</sup> Plaintiff asserted that the headlines which were issued by the 2<sup>nd</sup> Defendant continuously for almost three days were injurious to her as they were based on assumptions and that consequently, the PF lost an

election and the Government was injured. It was her further testimony that as Minister of Lands and Natural Resources at the time, the Articles that were published by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants made her appear as one who does not care about the land.

6.28 On my analysis of the Plaintiffs' contentions and the evidence on record, I find that though the Plaintiffs have set out the statements that were published about them by the Defendants and how the said statements affected them, they have not led sufficient evidence to support their assertions that the said statements lowered the estimate of their reputation in right-thinking individuals who interpreted the Articles, Reports and Opinion of the Defendants to mean that: -

- (i) The Plaintiffs are corrupt;*
- (ii) The Plaintiffs do not care about poor Zambians;*
- (iii) The Plaintiffs are thieves;*
- (iv) The Plaintiffs are morally bankrupt;*
- (v) The Plaintiffs are not fit to hold public office;*
- (vi) The Plaintiffs do not care about the environment;*
- (vii) The Plaintiffs are anti-development;*
- (viii) The Plaintiffs are selfish; and*

*(ix) The Plaintiffs engage in rigging elections, and all manner of electoral malpractices.*

6.29 I note further that the 1<sup>st</sup> Plaintiff's contention that the Defendants' Publications and subsequent comments led to the anger that developed against him and those named in Publications, is not supported by any cogent evidence. Further, the 1<sup>st</sup> Plaintiff did not lead any cogent evidence to support his assertion that his long public service has been brought to nothing in the right estimation of people.

6.30 Similarly, the 2<sup>nd</sup> Plaintiff did not lead any cogent evidence to support her assertions that the Defendants' Publications were injurious to her reputation and made her appear as one who did not care about land.

6.31 I note that to further support the contention that the Plaintiffs' reputations were injured as a consequence of the Defendants' Publications, at trial, the 1<sup>st</sup> Plaintiff referred to a Video recording in which President Hakainde Hichilema, who at the time of the video was leader of the opposition party, referred to the 3<sup>rd</sup> Defendant's Report on the Plaintiffs' involvement in the illegal trade of Mukula logs. In that Video recording, the President stated that the Plaintiffs should sue the 3<sup>rd</sup> Defendant if they were of the view that the contents of its Report were false.

6.32 In my view, the production of this Video recording by the Plaintiffs was meant to demonstrate to this Court that the

President, after having had sight of the Report, had lowered his estimation of the Plaintiffs' reputation.

6.33 Similarly, in cross examination, the 1<sup>st</sup> Plaintiff referred to an Opinion published by the 2<sup>nd</sup> Defendant, wherein Harry Kalaba, the President of the Democratic Party, is quoted as stating that the 3<sup>rd</sup> Defendant could not lie about the contents of the Report wherein the Plaintiffs are mentioned as being involved in the illegal trade of Mukula logs.

6.34 This reference to the Article by the 1<sup>st</sup> Plaintiff was to demonstrate to this Court that Harry Kalaba, after having had sight of the contents of the 3<sup>rd</sup> Defendant's Report, had lowered his estimation of the Plaintiffs' reputation.

6.35 On my analysis of the video recording of the President and the opinion of Harry Kalaba, I am of the view that the two pieces of evidence do not support the Plaintiffs' assertions that as a consequence of the Defendants' Publications, their estimate by right-thinking members of society had been lowered or that they had been exposed to hatred, disparaged or injured in their office or profession. This is because at trial, no cogent evidence was led by the Plaintiffs to demonstrate the President's or Harry Kalaba's perception of the Plaintiffs' reputation prior to the 3<sup>rd</sup> Defendant's Report to which the President and Harry Kalaba's statements regarding the Plaintiffs' involvement in illegal Mukula trading could be compared. If such evidence had been led, it may have supported the Plaintiffs'

claims that their estimation by right-thinking members of society had been lowered or that their reputations had been injured by Defendants' Publications.

6.36 I note further, that at the trial of the action, only the Plaintiffs testified about the effects that the Defendants' Publications had on their reputation. In my view, the Plaintiffs ought to have led cogent evidence, such as witness testimonies, to show that the estimation of their reputation by right-thinking members of society had been lowered or that they had been exposed to hatred, disparaged or injured in their office or profession as a consequence of the Defendants' Publications, as was guided by the Supreme Court in the case of ***Given Lubinda v Edmond Lifwekelo and Another***<sup>6</sup>, cited above.

6.37 The foregoing position is further fortified by the case of ***Tolley v Fry and Sons Limited***<sup>9</sup>, where it was stated as follows: -

***“Words are not defamatory however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation in the eyes of the right-thinking men generally.”*** (Court's emphasis)

6.38 Having found that the Plaintiffs have failed to prove that their reputations were injured by the Defendants' Publications, it follows that the Plaintiffs have failed to

prove their allegations of libel against the Defendants. Consequently, the Plaintiffs' claims for damages for libel against the Defendants' lacks merit and are accordingly dismissed.

6.39 The foregoing position is fortified by the case of ***Khalid Mohamed v The Attorney General***<sup>1</sup>, cited by both learned Counsel, wherein it was held as follows: -

***“A Plaintiff must prove his case and if he fails to do so the mere failure of the opponent’s defence does not entitle him to Judgment... Quite clearly a Defendant in such circumstances would not need a defence.”*** (Court’s emphasis)

6.40 As the Plaintiffs' claims in this action stem from their claims for damages for libel, which have failed, it follows that the Plaintiffs' other claims consisting of an Order of permanent injunction restraining the Defendants, their Servants and agents from publishing libellous and malicious Articles and Opinions relating to them, and their claim for exemplary damages and interest thereon and costs, lack merit and are also dismissed.

## **7. CONCLUSION**

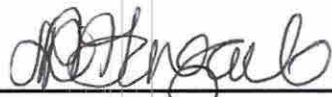
7.1 In conclusion, as the Plaintiffs have failed to show that their reputations were injured by the Defendants' Publications, it follows that the Plaintiffs have failed to prove their allegations of libel against the Defendants.

Consequently, the Plaintiffs' claims for damages for libel against the Defendants lacks merit and are accordingly dismissed.

7.2 It follows that the Plaintiffs' other claims consisting of an order of permanent injunction restraining the Defendants, their Servants and Agents from publishing libellous and malicious articles, and opinions relating to them and their claim for exemplary damages and interest thereon and costs, lack merit and are also dismissed.

7.3 Costs are for the Defendants, to be taxed in default of agreement.

**SIGNED, SEALED AND DELIVERED AT LUSAKA, THIS 28<sup>TH</sup> DAY  
OF FEBRUARY, 2025.**



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

