

IN THE HIGH COURT FOR ZAMBIA 2022/HP/1514
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

**ZAMBIA NATIONAL BUILDING SOCIETY
AND
NEWS DIGGERS LIMITED**

**PLAINTIFF

DEFENDANT**

**BEFORE THE HONOURABLE MR. JUSTICE MR. I. M.
MABBOLOBOLO IN CHAMBERS ON THE 26TH DAY OF JULY,
2024.**

For the Plaintiff: Ms. E. C. Museba – Messrs Ventus Legal Practitioners
Ms. M. Chisulo – Messrs Ventus Legal Practitioner

For the Defendant: Mr. O. Sambo – Messrs Mwenye and Mwitwa Advocates.
Mr. E. B. Kaluba – Messrs Mwenye and Mwitwa Advocates.

**RULING ON APPLICATION TO DISPOSE OF MATTER ON
QUESTIONS OF LAW**

A. CASES REFERRED TO

1. *Die Spoorhoed v South African Railways* (1946) A. D 999
2. *Derbyshire CC v Times Newspaper Ltd* ((1939) A.C. 534
3. *National Pensions Scheme Authority v Charles Milupi and News Diggers Media Limited* (2020/HP/0216
4. *Bitou Municipality and Lonwabo Ngogo v Memory Booysen and Paul Jardon* (Western Cape High Court (Case No. 1359 12010
5. *Knupfer v Landon Express Newspaper Ltd* 91944) 1 all ER 495
6. *Chemicals Ltd v Hill and Dlelamain Zambia Ltd and Another*
7. *John Shaw and Sons Ltd v Shaw* (1935) 2KB 113
8. *Metropolitan Saloon Omnibus Co. Ltd v Hawkins* 1859 4HN 87
9. *Post and Telecommunications Corporation v Modus Publications* (1998) (3) SA (ZSC) AT 1123

10. *Post Newspaper Limited v Sonny Paul Mulenga* (2014) Appeal No. 22
11. *Benny Hamainza Wycliff Mwiinga v Times Newspaper Limited* (1988 -1989) ZR 177 SC
12. *Micheal Chilufya Sata v Chanda Chimba III and Others* 2010/HP/1283
13. *Bank of Zambia v Chibote Meat Corporation Limited* (2009) ZR103
14. *Van Boxtel v Kearney*
15. *Byrne v Deane* (1937) 1KB818
16. *Zambia Consolidated Copper Mines v Richard Kangwa* (2000) ZR 109
17. *Wise v EF Hervey Limited* SCZ Judgment No. 18 of 1985

B. LEGISLATION REFERRED TO:

1. *Building Societies Act Chapter 412 of the Laws of Zambia*
2. *Defamation Act Chapter 68 of the Laws of Zambia*
3. *Minister of Finance (Incorporation) Act, Chapter 349 of the Laws of Zambia*
4. *Rules of the Supreme Court England, 1999*

C. OTHER WORKS:

1. *Halsbury's Laws of England 4th Edition Re -issue Volume 28 (1997)*
2. *Zambia Civil Procedure Commentary and Cases*
3. *Winfield and Jolowicz on Tort 8th Edition (2010) London, Sweet & Maxwell*
4. *Gatley on Libel and Slander 8th Edition*

1.0 INTRODUCTION

1.1. This is a Ruling on the Defendant's Application for an Order to dispose of Matter on the following Questions of Law:

1.1.1. Does the Plaintiff being a government owned and controlled entity have the right to bring an action in defamation?

1.1.2. Does the Plaintiff have the locus standi to sue for defamation on account of the alleged defamatory statements which were directed at its officers and not the Plaintiff itself?

1.2. The Application was filed by the Defendant on 17th October, 2022 and accompanied by an Affidavit in Support and Skeleton Arguments both of even date. The Application was opposed by the Plaintiff who filed an Affidavit in Opposition and Skeleton Arguments in Opposition on 7th November, 2022.

2.0. BACKGROUND

2.1. The Plaintiff, a statutory body established under **the Building Societies Act Chapter 412 of the Laws of Zambia** as amended by **Act No. 22 of 2005** took out an action in defamation on 27th September, 2022 against the Defendant, a Limited Liability Company incorporated under the **Companies Act No. 16 of 2017** trading in the business of printing and publishing of a newspaper known as News Diggers.

2.2. According to the Plaintiff, sometime in or about 8th September, 2022, the Defendant falsely and maliciously wrote, printed and published an article carried at page 4 of Issue of 1295 No. the paper with a blaring headline which read:

“ZNBS Directors steal K649,000.00 after creating private payroll, as police arrest 3 some senior Directors at Zambia National Building Society (ZNBS) have been caught in a fraudulent scheme in which

they created a secret payroll and used it to pay themselves different allowances amounting to over K649,000.00”

2.3. Further that the Defendant made a subsequent publication on 9th September, 2022 under issues No. 1299 at page 2 concerning the Plaintiff's Directors with a headline which read:

“Theft of K649,000-.00 by ZNBS Director shocks ZUFLAW..... The Financial and Allied Workers (ZUFLAW) says it is saddened with the theft of over K649,000.00 by some senior Zambia National Building Society (ZNBS) Directors”.

2.4. The Plaintiff's position is that the forecited publications were a misrepresentation and defamatory in nature and was therefore seeking the following reliefs:

2.4.1. *An Injunction to restrain the Defendant whether by its servants or agents or otherwise whosoever from further publication of the said article words or any words to the like effect as would be injurious to the Plaintiff's reputation.*

2.4.2. *Damages on the footing of aggravated or exemplary damages for each defamatory publication;*

2.4.3. *Further or other relief the Court may deem fit; and*

2.1.4. *Costs of and incidental to the proceedings.*

2.5. The Defendant's defence in a nutshell is that:

- 2.5.1. *it denies that the words pleaded in the Statement are or were understood to bear or are capable of bearing the meanings alleged or any other defamatory meaning whatsoever.*
- 2.5.2. *the articles in question were in substance true and accurate reports of facts which the Defendant had gathered following its professional inquiries.*
- 2.5.3. *the Defendant if necessary will rely on **Sections 6 and 9 the Defamation Act, Chapter 68 of the Laws of Zambia.***
- 2.5.4. *the words pleaded in the Statement of Claim do not attribute any wrong doing to the Plaintiff, but its Officers and the Defendant contends that the Plaintiff has no locus standi to bring this action in place of its officers.*

3.0. AFFIDAVIT EVIDENCE

- 3.1. The Affidavit in support of the Application for an Order to dispose of the Matter on Questions of Law was sworn by Sipilisiwe N'cube, the Human Resources Manager in the employ of the Defendant.
- 3.2. The gist of her deposition is that the alleged defamatory words do not suggest any wrong doing on the part of the Plaintiff, but its Directors. That the Plaintiff is a corporate body established under the **Building Societies Act, Chapter 412 of the Laws of Zambia** established with the mandate of mobilizing financial

resources to invest in mortgages with the aim of increasing the country's housing stock.

3.3. A further averment is that the Plaintiff is owned and controlled by the Government through the Ministry of Finance with the Board of Directors and Secretary appointed by the Minister of Finance in line with the provisions of **Section 3A** of the **Building Societies Act Chapter 412 of the Laws of Zambia**. That additionally, even the Rules by which the Plaintiff is governed are made by the Board of Directors appointed by the Minister, for the Minister's approval and the Minister has discretion to modify the rules before approving them.

3.4. The Deponent stated that she had been advised and believes to be true that:

(i) *The Plaintiff being a public body which is owned and controlled by the Government of the Republic of Zambia has no right to bring an action for defamation.*

(ii) *the Plaintiff as a Corporate body has no right to sue for defamation on account of alleged defamatory statements which are directed at the Plaintiff's Officers and not the Plaintiff itself.*

3.5. The averment therefore was that the Defendant seeks the determination of the issues as they are capable of resolving the entire matter.

3.6. The Affidavit in Opposition to Affidavit in Support of Summons for an Order to Dispose of Matter on Questions of Law was

sworn by Dorcas Shiyunga, the Legal Counsel in the employ of the Plaintiff organization.

- 3.7. The gist of the deposition is that contrary to the position taken by the Defendant, the words expressed by the Defendant in the comments expressed by ZUFIAW in exhibit **DS1** though not naming any Director in fact suggest maladministration of the institution and further presupposes that the Plaintiff lacks the requisite financial and institutional control of its affairs to the extent that a private payroll could secretly be created and the funds disbursed without the Plaintiff's knowledge.
- 3.8. It was deposed that contrary to the Defendant's misleading and poorly investigated report which story was written based on information purportedly obtained from an undisclosed member of staff from the Plaintiff's institution, the story attributes the creation of a private payroll to unnamed Directors. That the Plaintiff will aver that it did not observe any such payroll on its internal system or at all.
- 3.9. A further averment is that it is the Plaintiff's tight controls that led to the discovery of fraudulent activities engineered by some junior members of staff, which finding was reported to the Police by the Plaintiff itself. That a circular marked "**DS2**" was issued to its staff reminding them of existing policy regarding responding to external communication including responding to press queries which would potentially interfere with the ongoing police investigations.

3.10. The Deponent averred that contrary to the assertion by the Defendant, the Minister of Finance is merely a shareholder in the Plaintiff institution and that controls of the Plaintiff and management of its affairs rests solely on its Board of Directors as may be gleaned from the Plaintiff's Share Certificate marked **"DS3"**.

3.11. The Deponent states that she has been advised by the Advocates on Record and believes to be true that though being a creation of Statute, the Plaintiff is a purely commercial body corporate vested with the right to sustain an action for defamation in order to protect its corporate image which image is distinguishable from that of elected bodies such as local authorities which exercise governmental administrative functions.

3.12. The final averment by the Plaintiff is that contrary to the assertion by the Defendant, it may be noted from the publications marked **"DS4"** that the Defendant makes particular reference to the creation of a private payroll on the Plaintiff's internal system and further asserts that monies were disseminated without proper documentation. Further that the allegations make particular reference to the Plaintiff itself and no reference has been made, nor names stated pointing out which Directors stole but a blanket unsubstantiated allegation of theft.

3.13. In the Affidavit in Reply sworn by Sipilisiwe N'cube on behalf of the Defendant and filed into Court on 9th December, 2022, it

was reiterated that the Defendant's articles produced as exhibits in the Affidavit in Opposition do not suggest any wrong doing by the Plaintiff but simply report that the Plaintiff is a victim of fraud which was committed by its officers. That the mere fact that the articles do not disclose the Plaintiff's officers who were behind the fraud does not entitle the Plaintiff itself to sue.

3.14. The Deponent repeated that the Plaintiff is a government institution as may be seen from the Plaintiff's Annual Reports extracts marked "**SN1**" for 2020 and 2019 obtained from the Plaintiff's official Website on 6th December, 2022 which clearly explain that the Plaintiff was created by the Government of the Republic of Zambia with the aim of increasing the country housing stock. That in the Annual Reports, the Plaintiff clearly acknowledges that it is owned by Government and its operations are controlled by the Ministry of Finance. Further that to this effect, the Plaintiff regards other Government owned entities as related entities and in its financial reporting, the Plaintiff is required to disclose all dealings with other Government entities in line with International Accounting Standards.

3.15. The concluding averment in reply is that the Deponent is advised by the Defendant's Advocates and believes to be true that under Zambian Law, Government owned entities are subject to the Government's direction and control. That the Government has overriding controlling powers over the

decisions and wishes of directors and that although the Plaintiff is a body corporate which operates commercially, it is nonetheless a Government entity under Government's control and therefore has no right to bring an action for defamation.

4.0. SKELETON ARGUMENTS

- 4.1. In its Skeleton Argument, the Defendant contends that the Plaintiff's action ought to be dismissed on both the grounds that at common law, a Government entity has no right to bring an action in defamation and that a company has no *locus standi* to sue for allegedly defamation statements which were directed at its Officers. It was submitted that it is settled law that a Government institution, a public body or indeed any other body performing government functions on behalf of the Government is not entitled to bring an action for defamation.
- 4.2. To begin with, my attention was drawn to the Learned Authors of **Winfield and Jolowicz on Tort** and particularly to Page 588 **Paragraphs 12 to 18** for the position that in English Law, a Government body (whether a Local Authority or an organ of Central Government) cannot sue even if a statement in no way concerns its "governing" reputation. Additionally, the Defendant cited Paragraph 14 at Page 25 of **Halsbury's Law of England** to buttress the point about institutions of Central or Local Government having no right at common law to maintain an action for defamation.

- 4.3. The Defendant adverted to the South African case of **Die Spoorhoed v South African Railways**¹, the English case of **Derbyshire CC v Times Newspaper Ltd**² and the **Zambian case of National Pensions Scheme Authority v Charles Milupi and News Diggers Media Limited**³ all for the position that a Government institution cannot maintain an action for defamation.
- 4.4. Lastly on this point, the Defendant referred me to another South African case of **Bitou Municipality and Lonwabo Ngoqo v Memory Booysen and Paul Jardon**⁴ for the underlying rationale that any subject must be free to express his opinion about management of the affairs without fear of legal consequences.
- 4.5. On the question of the Plaintiff having no *Locus Standi* to sue for defamation on account of allegedly defamatory statements directed at his officers, it was submitted that it is trite law in defamation that the proper Plaintiff in every action for libel is the person who was actually and personally defamed and not any other person. For this proposition, I have been referred to **Page 13 Paragraph 22 of Halsbury's Laws of England** and the English case of **Knupfer v London Express Newspaper Ltd**⁵.
- 4.6. It has been submitted that in the present case, the Plaintiff's action is premised on the Defendant's two newspaper articles and the specific words complained of are reproduced in paragraphs 2.2 and 2.3 above.

4.7. The contention therefore is that it is very clear that the words in question relate to the Plaintiff's Directors and not the Plaintiff itself. That the words do not suggest or impute any wrong doing to the Plaintiff, but its officers and that the words do not suggest that the Directors' actions had the blessings of the Plaintiff but categorically state that some and not all Directors were involved in the fraud. Further that the Plaintiff has not been accused of any wrong doing by the Defendant and if the words in question are defamatory in any way (which the Defendant denies), it should be for the individual Directors to sue in their individual capacity.

4.8. A related submission is that the Plaintiff has also acknowledged the fact that the words in question relate to the Plaintiff's Directors and not the Plaintiff itself and this can be seen from Paragraph 5 of the Statement of Claim where the Plaintiff pleads as follows:

"By the said words in their natural and ordinary meaning, the Defendant meant and was understood to mean:

(i) That the Plaintiff's Board of Directors and Senior Executives ("Directors") were engaging in fraudulent activities and guilty of theft".

4.9. Further that clearly, the Plaintiff has acknowledged that the allegations of theft and fraud, if any, were directed at the Plaintiff's Directors and not the Plaintiff. That the attempt is noted by the Plaintiff to suggest that by allegedly accusing some

of its Directors of theft and fraud, the Defendant had effectively defamed the Plaintiff itself. The submission in this regard is that the Plaintiff's reputation, if any, exists or ought to exist separately and distinct from that of its individual Directors because a body corporate is a separate legal personality which exists independent of its officers on the authority of various Supreme Court cases including **Chemicals Ltd v Hill and Delamain Zambia Ltd and Another**⁶.

4.10. Citing the learned authors of **Gatley on Libel and Slander**, the Defendant stated that a corporation cannot maintain an action for Libel or Slander for any words which reflect upon itself but solely upon its individual officer members. To buttress this point, my attention was drawn to Page 14 Paragraph 25 of **Halsbury's Law of England**.

4.11. The concluding submission is that it is clear from the foregoing that a corporation has no *Locus Standi* to bring an action for defamation where the words complained of do not reflect upon the Corporation itself but its officers. That it is for the individual officers to bring an action against the Defendant. Further that this action is incompetently before this Court and ought to be dismissed even on this alone for want of *Locus Standi*.

4.12. In the Skeleton Arguments in Opposition filed by the Plaintiff on whether I have jurisdiction to determine the Defendant's Application, the question was answered in the affirmative on the authority of **Order 14A of the Rules of the Supreme Court, 1999**.

4.13. It was submitted that much as it is not in dispute that the Plaintiff is a creation of Statute and the Minister of Finance is a shareholder, it is imperative to distinguish the legal principles ascribed to ownership and that of control. That it is a settled principal of law that a corporate body assumes a separate legal personality from that of its members as was stated in the case of **Associated Chemicals Limited v Hill and Delamain Zambia Limited and Ellis and Company** (As a Law Firm). That arising from the holding of the Supreme Court in this authority, it suffices to state that the Minister as a shareholder holds an interest of ownership in the Plaintiff as do other parties that may be shareholders and that control of the Plaintiff's corporate affairs solely rests with the Board of Directors. Further that for this reason, the Minister cannot usurp control of the Board of Directors as that would fly in the teeth of the tenets of corporate governance. The case of the Court of Appeal in **John Shaw and Sons Ltd v Shaw**⁷ was cited to drive home the point.

4.14. A follow up submission is that in as much as the Minister exercises ownership rights over the shares of the Plaintiff, control is vested in the Board of Directors. That it is trite law that in any post incorporation procedure, the shareholders appoint Directors and draw up Articles of Association which govern the administration of the corporation. Further that in like manner, the Minister adopts rules by which the Plaintiff ought to be governed in accordance with **Section 3A subsection 3 of the Building Societies Act.**

- 4.15. Moving on to the issue whether the Plaintiff has a right to bring an action for defamation, it was argued that, it is not in dispute that the Plaintiff is a creation of Statute, which by its very nature affords the Plaintiff the right to sue and be sued as a corporate entity. The case of **Metropolitan Saloon Omnibus Co. Ltd v Hawkins**⁸ was adverted to for the position that at common law a corporation could maintain an action for slander of title in which a great deal of money has been lost.
- 4.16. Submitting further, on the point, the Plaintiff cited the case of **Derbyshire County Council v Times Newspapers Limited and Others**² regarding actions against public institutions like democratically elected government bodies and institutions of Central or Local Government. The thrust of the argument on the well settled principle in this case is that it is distinguishable from the present case. That in doing so it is imperative to draw a distinction between democratically elected government bodies whose mandate is to discharge administrative functions of Central Government and those of commercial corporate bodies created by Statute whose mandate is to derive profit from their business operations.
- 4.17. Citing **Black's Law Dictionary**, the Plaintiff set out the definitions of corporate body, public body and municipal corporations. The argument is that from the reading of the definitions above and consideration given by the House of Lords in the **Derbyshire** case where particular reference was to institutions of Central Government such as local authorities

discharging administrative functions vested in Central and Local Government. That the officials of such entities are often duly elected by the citizenry and should be held accountable to the public through regular checks and balances and public criticism of course through truthful reporting. Further that unlike that position, the Plaintiff herein is a body corporate formed with the sole purpose of operating a business, which business involves trade and commerce through its banking services among which include provision of mortgage facilities aimed at increasing housing stock as provided for in **Section 3 (4) of the Building Societies Act.**

4.18. In distinguishing Statutory bodies from Public Corporation, the case of **Post and Telecommunications Corporation v Modus Publications**⁹ was said to be instructive as to what constitutes a public body within the meaning expressed in **Derbyshire**. The rider is that in ascertaining whether or not the Plaintiff herein can be said to be a public body, our attention was drawn to the qualifying factors raised in the **Modus Publications** case. Additionally, the Plaintiff adverted to the preamble of the **Building Societies Act** with emphasis on providing for membership of Building Societies and conducting of business and management of Building Societies. **Section 2(1)** on the definition of **Building Societies Act** was also referred to.

4.19. A related submission is that from the reading of the above, it is abundantly clear that the function assigned to the Plaintiff herein is to raise stock or funds from which mortgages may be

advanced. That there is no doubt that the Plaintiff cannot be said to be a monopoly of the service it provides considering the fact that there are other Building Societies and numerous Financial Service providers enabled by the Act and the **Banking and Financial Services Act**. Further that the Plaintiff does not discharge any administrative nor public functions within the meaning ascribed under **Black's Law Dictionary** referred to above.

4.20. **Section 7** of the **Building Society Act** was drawn to my attention for the position that from the date of its registration, a Building Society shall be a body Corporate by its registered name, having perpetual succession and a common seal. That the Plaintiff having assumed perpetual succession may be distinguished from public bodies described in **Derbyshire** on account of them being elected public officers whose accountability lies to the public.

4.21. It was submitted that on the strength of the foregoing authorities, the cases of **Die Spoorhoed v South African Railways**¹ and **National Pension Scheme Authority v Charles Mulupi and News Diggers Media Limited**³ may be distinguishable from the present case. That the Respondent **Die Spoorhoed** was a Public Service Corporation charged with the responsibility of managing the National Railway system which function in keeping with the law of that country was vested in Central Government and the same was true with the National Pension Scheme Authority in which the Plaintiff had

the responsibility of administering the mandatory National Pension Scheme and the Social Security Policy which functions cannot be divorced from Central Government of the Republic of Zambia. According to the Plaintiff what the two cases have in common is that the Institutions concerned both assumed the status of monopoly in their respective industries.

4.22. Pressing the point further, the Plaintiff argues that the Plaintiff herein is not a government department nor has it been vested with the responsibility to discharge any administrative functions on behalf of the Government of the Republic of Zambia. That the Plaintiff exists as a business in the financial sector for the sole purpose of generating profit in the same way that other privately-owned Commercial Banks which provide mortgage facilities, are a creation of the **Companies Act No. 10 of 2017** and are regulated by the **Banking and Financial Services Act No. 7 of 2017**.

4.23 The Plaintiff adverted to the Learned authors of **Clerk and Lindsell on Tort** for the position, among others, that a trading corporation may be defamed by a defamatory matter which relates to its business or the conduct of its affairs. That from the reading of the Articles exhibited in the Affidavit in Opposition herein, it is evident that the allegations made with respect to creation of a secret payroll and that the same could not be picked up by the Plaintiff's Auditors from 2019 to 2022 as stated by ZUFIAW clearly indicate an imputation of maladministration which libelous publication has resulted in

the Plaintiff's corporate image being damaged as it is shunned by the right thinking members of society. That the said imputation relates to the Plaintiff's core business which involves administration of finances.

4.24. Concluding on the first limb, it was submitted that much as it is recognized that media houses have the right to freedom of expression, such freedom under Zambian Law is not absolute. That it is of utmost importance that the Court, in fostering freedoms under the Constitution metes out a balance with the right to reputation as held by the Supreme Court in the case of **Post Newspaper Limited v Sonny Paul Mulenga**¹⁰.

4.29. Regarding the second question on whether the Plaintiff has *Locus Standi* to sue for defamation, it was submitted that it is a settled principle of law that a libelous statement must refer to the Plaintiff. That however, in ascertaining such reference, it need not be direct and an inference of such reference is sufficient. To buttress this point, the case of **Benny Hamainza Wycliff Mwiinga v Times Newspaper Limited**¹¹ and **Micheal Chilufya Sata v Chanda Chimba III, Zambia National Broadcasting Corporation, Muvi T.V Limited and Mobi TV International**¹² were cited. Additionally, Paragraph 12.18 Page 421 of **Winfield and Jolwicz on Tort** was referred to.

4.30. In the Defendant's Skeleton Arguments in Reply filed on 9th December, 2022, it was submitted that the Plaintiff is a government owned and controlled entity both under Company Law and for purposes of the law of defamation. That the

argument relied upon by the Plaintiff on the doctrine of separate legal personality as enunciated in the case of **Associated Chemicals Limited v Hill and Delamain Zambia Limited and Ellis and Company**⁶ where the Supreme Court held that a company is a person distinct from its members or shareholders is misplaced and irrelevant to the determination of this application. Further that it is settled law that a company and its shareholders are two separate entities but for the purpose of the Law of Defamation, being a corporate entity does not in and of itself make an entity independent of the Government.

4.31. Regarding the submission by the Plaintiff placing reliance on the case of **John Shaw & Sons Limited v Shaw**⁵ that as a corporate entity, the Plaintiff is not controlled by its shareholder but by the Board of Directors, the Defendant submitted that the case is no longer sound law in Zambia as far it relates to the powers of shareholders over directors. That in relying on this English decision, the Plaintiff overlooks several pronouncements of the Supreme Court to the effect that the Board of Directors is amenable to the overriding controlling powers of the shareholders as beneficial owners. Further that the fact that Directors dance to the tune of shareholders is settled in Zambia as stated in the case of **Bank of Zambia v Chibote Meat Corporation Limited**¹³ wherein the case of **Van Boxel v Kearney**¹⁴ was cited.

4.32. My attention was also drawn to the Supreme Court case of **Zambia Consolidated Copper Mines Limited v Richard**

Kangwa and John Paul Mwila Kasengele and Others v Zambia National Commercial Bank where it was emphasized that the shareholders have and enjoy as of right overriding authority over the company's affairs and even over the wishes of mere nominees or directors and that Directors and Managers must dance the shareholder's tune and they have no powers to fetter, change or modify a shareholder's decision.

- 4.33. It was contended that state owned entities are inseparable from the Government and that as a Government owned and controlled entity, it is against public policy for the Plaintiff to inhibit public scrutiny, criticism and commentary by using public resources it presides over to sue the members of the press who alert the public to the illegalities committed by the Plaintiff's officers. The reiteration is that the Plaintiff has no recognized right at law to sue for defamation.
- 4.34. Submitting further, the Defendant stated that the argument by the Plaintiff that it is a corporate organization whose mandate is derive profits and therefore it can bring an action in defamation is factually incorrect and legally flawed. That the argument that it was formed for the sole purposes of operating a business in form of a Bank flies in the face of the evidence on Record, which has been conceded by the Plaintiff's own Affidavit in Opposition dated 8th November, 2022 particularly at Paragraph 8. Further that from the Plaintiff's Annual Reports which have been exhibited in the Defendant's Affidavit in Reply, it is clearly shown that the Plaintiff's primary mandate as given

to it by the Government is to mobilise financial resources to invest in mortgages with the aim of increasing the country's housing stock and that it is therefore undeniable that the Plaintiff's mandate is to implement part of the functions of Central Government.

4.35. Responding to the assertion by the Plaintiff that only democratically elected bodies whose mandate is to discharge administrative functions of Central Government are barred from bringing action in defamation, the Defendant argued that this argument is legally flawed. That the quotation cited by the Plaintiff in this regard in the case of **Derbyshire City Council v Times Newspaper Ltd**² is incompletely cited and therefore misleading. According to the Defendant, the Plaintiff had left out a crucial portion which in fact kills their argument that only democratically elected government bodies can not sue for defamation. The submission therefore is that it is not correct that only democratically elected government bodies are exempted from the right to sue for defamation as the exemption applies to all government bodies and that the question for determination is whether or not the Plaintiff is a government body for purposes of the Law of defamation.

4.36. The Defendant called in aid a Zimbabwean Supreme Court of **Posts Telecommunications Corporation v Modus Publications**⁹ where Mc Nally J. proposed to set out some criteria from the cases he cited therein which he thought are

helpful in deciding whether in this context PTC was a state or government body as follows:

- 4.36.1** *Whether the body has any discretion of its own; if it has, what is the degree of control by the executive over the exercise of that discretion.*
- 4.36.2.** *Whether the Corporate has any financial autonomy.*
- 4.36.3.** *Whether the functions of the Corporate are government functions.*
- 4.36.5.** *Whether if the body is not a Statutory Trading Corporation, it performs functions either at local or national level.*
- 4.36.6.** *Whether the body concerned is at least largely or affects a monopoly providing what are generally regarded essential services traditionally provided by government, it would be contrary to public policy to muzzle criticism*

4.37. Applying the above to the present case, the Defendant submitted that:

- 4.37.1. The Plaintiff's discretion if any, is very limited as the Government exercises overriding control over the affairs of the Plaintiff as a government entity as can be seen from **Section 3A of the Building Societies Act Chapter 412 of the Laws of Zambia.** That

under this provision the Plaintiff's Board of Directors are political appointees; the Plaintiff's Secretary is a political appointee; and the rules by which the Plaintiff and its officers are governed by the Minister's approval and alteration all of which are facts acknowledged by the Plaintiff in the Affidavit dated 8th November in Particular Paragraph 9.

4.37.2. The funds administered by the Plaintiff are public funds as has clearly been stated by the Plaintiff itself at Paragraph 5 (ii) of the Statement of Claim.

4.37.3. The Plaintiff is supervised by the Ministry of Finance and accountable to that Ministry for its financial activities and that this is a notorious fact also confirmed by the extract from the Plaintiff's Annual Reports as exhibited in the Defendant's Affidavit in Reply.

4.37.4. The Plaintiff is a Statutory trading corporation.

4.37.5. The Plaintiff is the only public owned Building Society. There is no other Building Society or entity of any kind in the country which is tasked with the mandate of improving the country's housing stock.

4.38. Submitting further, the Defendant stated the Plaintiff's contention that it is a profit-making entity and therefore eligible to sue for defamation lacks legal basis and the fact that a government entity may engage in profit making ventures in

order to fulfil its mandate does not divorce it from government. It is argued that many Government entities which have in the past been denied the right to sue for defamation are in fact profit making entities as can be seen from the Zimbabwean case of **Post Telecommunications Corporation, Derbyshire City Council v Times Newspaper Ltd**², the South African case of **Die Spoon v South African Railways**¹ and the Zambian case of **National Pension Scheme Authority v Charles Milupi and News Diggers Media Limited**³. The conclusion therefore was that the present case cannot be distinguished from these cases as sought to be argued by the Plaintiff.

4.39. With regards to the case of the **Post Newspapers Limited v Sonny Paul Mulenga**¹⁰ cited by the Plaintiff, the Defendant's argument is that this case is not helpful as it was between an individual and a Newspaper Company and never addressed the rights of a government entity to sue for defamation as is the case herein.

4.40 Regarding the Plaintiff's *locus standi* to sue for defamation, it was reiterated that the impugned articles relate to the Plaintiff's officers and not the Plaintiff itself. That the Plaintiff has no *locus standi* to sue for defamation as only individuals to whom the statement relates, if any, can sue for defamation. Further that the argument by the Plaintiff that the article does not mention any individual director who was involved in the theft and that the Plaintiff is entitled to sue because it was mentioned is not tenable at law.

4.41. A related submission is that merely mentioning someone in a publication does not render publication defamatory of the person mentioned and that the question of whether or not a publication is defamatory of a person depends on what has been said about that person. That in the present case, the Plaintiff was reported as a victim of theft by its servants and not as the perpetrator and as such does not suggest any wrong doing on the part of the Plaintiff.

4.42. Pushing the argument further, the Defendant submitted that from the Plaintiff's Skeleton Arguments, the only reason that these proceedings have been brought is because the individual directors were not named but were referred to as a class. That the Plaintiff is aware that under the circumstances, no single director is entitled to sue for defamation and it is therefore clear that the Plaintiff's directors now wish to enter the temple of justice through the back door by suing through the Plaintiff which this is not tenable. To buttress the point, the case of **Knuffer v London Express Newspaper Limited**⁵ cited by the Plaintiff in its Skeleton Arguments in opposition was adverted to by the Defendant for the position that where a statement is directed at a class of persons, no individual person belonging to the class is entitled to sue.

4.43. Addressing the Plaintiff's reliance on a passage from **Winnfield and Jolowicz** where the authors opine that a derogatory statement about the conduct of a company may impute wrong doing or incompetence to its directors or officers and that the

converse is true, the Defendant's position is that the analogy drawn by the Plaintiff is misguided. That what must be noted is that a company is managed by Directors and the success or failure of a company will be a reflection of the performance of its management team and this is why a statement about a company may, in exceptional cases, be imputed to the Directors. That on the contrary, the individual Directors of the company are not managed and controlled by the company and a company can have well established policies but unscrupulous Directors may still find some ways of trying to beat the system. Further that this does not mean that the company itself is wrong, but simply that the company is in wrong hands. Concluding on this line of argument, the Defendant's position is that there is no law which provides that imputations of misconduct on directors will entitle the company to sue for defamation and that the law is that a company cannot sue for imputations which reflect upon its officers and the company itself.

4.44. In reference to the Plaintiff's argument that the particular inference which relates to its administration is the creation of a payroll and not the theft itself suggesting that the allegations of the creation of the payroll relate to its administration and therefore attributable to the Plaintiff, the Defendant's contention is that this flies in the face of the Plaintiff's own pleadings and the evidence on Record in form of the articles produced by the Plaintiff itself.

4.45. It was submitted therefore that both allegations of theft and the creation of a secret payroll were attributed to some (and not all) Directors as clearly indicated by the words that the said payroll was made secretly by some of these senior directors and used it to pay themselves. The Defendant's argument therefore is that the Plaintiff was only mentioned as a victim of fraud, a fact which the Plaintiff has in fact acknowledged that the fraud actually took place. That there is nothing defamatory about being named as a victim of fraud and no right thinking member of society would understand the reporting of a fraud as defamatory of the victim of fraud. The case of **Byrne v Deane**¹⁵ was relied upon where the Court found that merely alleging that someone started a proper procedure to suppress crime cannot be defamatory.

4.46. The rider by the Defendant is that similarly, in the present case, the article simply reports the occurrence of a crime at the Plaintiff institution and goes further to explain that the Plaintiff has taken steps to report the matter to the police which led to the arrest of some of the Plaintiff's workers and that no reasonable person would understand this narrative as defamatory of the Plaintiff. That it is therefore curious to see that the Plaintiff who was reported to be the victim of the fraud is now championing a cause to protect the perpetrators of the fraud which action is an abuse of authority by the same unscrupulous and fraudulent directors who are aggrieved

because their hidden misdeeds were exposed by the allegations which are in any event true and justifiable.

4.47. In summation, the Defendant contended that this action is not tenable at law and ought to be dismissed on grounds that the Plaintiff being a government entity has no right to sue and that in any event the Plaintiff has no *locus standi* to bring these proceedings.

5.0. THE HEARING

5.1. The hearing of the Defendant's Application to dispose of the Matter on questions of law was held on 23rd May, 2024.

5.2. The oral submissions on behalf of the Parties respectively were, by and large, a rehash of the Arguments filed into court. For good order and avoidance of repetition these will not be repeated as they are on Record.

6.0. CONSIDERATION AND DECISION OF THE COURT

6.1. I have carefully considered the Application by the Defendant, the respective Affidavits, spirited Skeleton Arguments with authorities, and the oral Submissions by the Parties respectively. I am grateful for the industry by the Parties.

6.2. The Application has been made by the Defendant pursuant to **Order 14A Rules 1 and 2 of the Supreme Court Practice, 1999** which provides that:

"1 (1) The Court may upon the application of a party or of its own motion determine any question of law

or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that;

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

2) upon such determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just

(3) The Court shall not determine any question under this order unless the party either

(a) had an opportunity of being heard on the question, or

(b) consented to an order or judgment on such determination

(4) The jurisdiction of the Court under this order may be exercised by the master

(5) Nothing in this order shall limit the powers of the Court under Order 18 Rule 19 or any other provision of these rules

2. An application under Rule 1 may be made by summons or motion or (notwithstanding Order 32 Rule 1) may be made

orally in the course of any interlocutory application to the Court.

6.3. I have satisfied myself that this application is properly before me. I am vested with requisite jurisdiction to determine it in the manner it has been brought. I propose to address the Questions of Law put to me as below.

(i) Whether the Plaintiff being a government owned and controlled entity has the right to bring an action in defamation.

6.4. It is evident to me that the first limb of the question which I must necessarily address is whether the Plaintiff is a government owned and controlled entity. I say so because from my reading and understanding of the Parties' respective Submissions on the first question, it is clear that the Parties have taken and therefore advanced diametrically opposed positions. Only when the question whether the Plaintiff is a government owned and controlled entity is answered in the affirmative will it be necessary to tackle the second limb of the question, that it to say, whether it has a right to bring an action in defamation.

6.5. The Defendant has proceeded on the footing that the Plaintiff is a government owned and controlled entity as may be gleaned from the Skeleton Arguments filed in Support of the Application. Specifically, the Defendant has submitted that the Plaintiff has remained and is still a government owned and controlled entity.

That its board is appointed by the Minister of Finance in line with provisions of **Section 3A of the Building Societies Act Chapter 412 of the Laws of Zambia** with the mandate of mobilizing financial resources to invest in mortgages with the aim of increasing the country's housing stock.

6.6. On the other hand, the Plaintiff while not disputing that it is a creation of Statute contends that the Minister of Finance is only a shareholder in the Plaintiff and that there is a distinction between the legal principles ascribed to ownership and that of control. That at common law a corporate body assumes a separate legal personality from that of its members as enunciated in the case of **Associated Limited v Hill and Delamain Zambia Limited and Ellis & Company (AS a Law Firm)**⁶. Additionally, the Plaintiff adverted to the case of **John Shaw and Sons Ltd v Shaw**⁷ where the Court of Appeal stated that:

“When the general management of the company belongs to the directors, the shareholders have no power by ordinary resolution to give directions to the Board or over rule their decisions. Further the Court of Appeal emphasized that the company was an entity distinct from shareholders and its directors. If powers of management in the hands of the directors, they alone can exercise these powers”

The submission therefore was that in as much as the Minister of Finance exercises ownership rights over the shares of the Plaintiff, control was vested in the Board.

6.7. I am disinclined to agree with the Plaintiff on the position taken in reliance of the case of **John Shaw and Sons Limited v Shaw**⁷. My disinclination is informed by the fact that this is not the position of the law in our jurisdiction as rightly argued by the Defendant. The Supreme Court has unequivocally pronounced itself in several of its decisions that the Board of Directors is amenable to the overriding controlling powers of the shareholders as beneficial owners.

6.8. For avoidance of doubt, the Supreme Court in the case of **Bank Zambia v Chibote Meat Corporation Limited**¹³ stated that:

“The question which was not discussed which was infact staring the Court in the face was whether those with a controlling voice and interest in a company could not bind the corporate entities which in common language they “own”. In other words, it was not discussed, it seems to us, whether the beneficial owners of shares have or do not have overriding authority over a company’s affairs and even over the Board of Directors. See for example Van Boxtel v Kearney¹⁴.

The case of Van Boxtel¹⁴ and also the case of Re: Pan Electronic are authority for the proposition that the

beneficial owners especially shareholders, enjoy as a matter of right overriding authority over a company's affairs. Theirs is the controlling voice over the wishes of mere directors and nominees.

Thus we affirm that those with a superior claim and title such as beneficial owners of the company have overriding authority over the company's affairs even over the wishes of the Board of Directors".

- 6.9. In another case of **John Paul Mwila Kasengele and Others v Zambia National Commercial Bank**, the Supreme Court emphasized that a government owned entity, Zambia National Commercial Bank was subject to direction and control of the government. The Court stated that:

"The law is therefore settled and we need not say more except perhaps to emphasise that in corporate Law, Directors and Managers must dance the shareholder's tune. They have no powers to fetter, change or modify a shareholder's decision.

- 6.10. Finally on this point, the Supreme Court in the case of **Zambia Consolidated Copper Mines v Richard Kangwa**¹⁶ stated as follows:

"It is a mistake to talk about political directives and to ignore the government's more relevant character and capacity as the shareholder with

controlling interest. The attitude of the appellants seems to be that the wishes of the ultimate majority owners (that is Government of the Republic of Zambia) as expressed by the Head of State or his representatives can be ignored in this matter. They can not. Infact the law accepted in this country and many others is that the beneficial owners of the company -the shareholders -have and enjoy as of right overriding authority over the company's affairs and even over the wishes or mere nominees or director”

6.11. The issue of the Minister of Finance as a shareholder in the Plaintiff company requires contextual elaboration. In my view, although as can be seen from the **Building Societies Act**, the Plaintiff is a body corporate with capacity to sue and be sued it can not reasonably be argued that it is not subject to the control by government. Being a body corporate, does not divorce the Plaintiff from the government and I take Judicial Notice that the government has power to incorporate institutions and offices for the better carrying out of its mandate. The Minister of Finance is one such office which is incorporated under **Section 3 of the Minister of Finance (Incorporation) Act, Chapter 349 of the Laws of Zambia** which provides that:

“The Minister of Finance shall be a corporate sole by that name with perpetual succession and official seal and with power to acquire and hold in that name

lands, government securities, shares in any company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds, to enter into agreements in office, and to do all other acts necessary or expedient to be done in respect of the above matters or any of them”.

6.12. My discourse above overwhelmingly leads me to the inescapable conclusion that the Plaintiff is government owned and controlled contrary to the spirited averments and assertions by the Plaintiff. I do not see how the Minister of Finance with such expansive statutory powers as a shareholder in the Plaintiff can be said not to have control and by extension government over the affairs of the Plaintiff.

6.13. Having determined that the Plaintiff is a government owned and controlled entity, I will now proceed to determine whether it has a right to bring an action for defamation.

6.14. The Defendant’s position in making the application is that the Plaintiff’s action ought to be dismissed because at common law, a government entity has no right to bring an action in defamation because this is a well settled position of the law. Citing the learned authors of **Winfield and Jolwicz on Tort**, an excerpt of **Paragraph 12- 18** was reproduced as follows:

“-----However, in English law a government body (whether a local authority or an organ of central

government can not sue even if the statement in no way concerns its 'governing' reputation".

6.15. Reliance was also placed in the Learned authors of **Halsbury's laws of England** at **Paragraph 14** as follows:

"Institutions of central or local government, such as local authorities have no right at common law to maintain an action for defamation".

6.16. The South African case of **Die Spoorhoed v South Africa Railways**¹ was referred to where it was held that:

".....any subject is free to express his opinion upon the management of the country's affairs without fear of legal consequences. It would be a serious interference with the free expression of opinion if the wealth of the state derived from the state's subjects, could be used to launch against those subjects actions for defamation because they have falsely and unfairly criticized or condemned in the management of the country it would be difficult to assign any limits to the crown's right to sue for defamation once its rights in any case were recognized".

6.17. Further that the reasoning in the above case was cited with approval in the English House of Lords case of **Derbyshire v Times Newspapers Ltd**² where the Court stated, among others, that:

“It is of the highest public importance that a democratically elected government body or indeed any government body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.

.....

There are rights available to private citizens which institutions of central government are not in a position to exercise unless they can show that it is in the public interest to do so. The same applies, in my opinion to local authorities. In both cases I regard it as a right for this House to lay down that not only is there no public interest favoring the right of organs of government, whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it. It is contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech”.

6.18. On its part, the Plaintiff also cited the cases of **Derbyshire County Council v Times Newspaper Limited and Others²**, specifically the excerpt where it was stated that:

“..... was of the highest public importance that a democratically elected government body be open to

uninhibited public criticism, and since the threat of civil actions for defamation would place an undesirable fetter on the freedom to express such criticism, it would be contrary to public interest for such institutions of central or local government to have any right at common law to maintain an action for damages”.

6.19. While agreeing that the above principle is well settled, the Plaintiff's point of departure is that the present case ought to be distinguished as that applies to democratically elected government bodies whose mandate is to discharge administrative functions of central or local government and not to those of commercial corporate bodies created by statute whose mandate is to derive a profit from their business operations.

6.20. The Plaintiff's related submission centered on the definitions of a corporate body, a public body and a Municipal corporation as set out in **Black's Law Dictionary** respectively as follows:

“one formed for the purpose of transacting business in the widest sense of that term, including not only commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit...”

Whereas

“..... a public body is one created by the state for political purposes and to act as an agency in the administration of civil government generally within a particular territory or subdivision of the state, and usually invested for the purpose, with subordinate and local powers of legislation, such as county, city town or school district. These are sometimes called “political corporations.”

Further that:

“Municipal Corporations are public service corporations whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroads, gas, water and electric light companies. The business of such companies is said to be affected with a public interest and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this charter”.

6.21. The thrust of the Plaintiff's argument from the foregoing is that it is apparent that the consideration by House of Lords in the **Derbyshire** case was with particular reference to institutions of central and local government who should be held accountable and unlike this position, the Plaintiff in this matter is a body corporate with the sole purpose of operating a business which involves trade and commerce through its banking service in

accordance with **Section 3 (4) of the Building Societies Act** among which include provision of mortgage facilities aimed at increasing housing stock.

6.22. In further distinguishing statutory bodies from public corporations, the Plaintiff adverted to the case of **Posts and Telecommunications v Modus Publications**⁹ as being instructive as to what constitutes a public body within the meaning expressed in **Derbyshire** where the Court pointed out the following considerations.

(a) **whether the functions of the corporation are government functions**

(b) **whether, if a body is not a statutory trading corporation, it is at least largely or effectively a monopoly, providing what are generally regarded as essential services traditionally provided by government, it would be contrary to public policy to muzzle criticism”**.

6.23. According to the Plaintiff a reading of the preamble to the **Building Societies Act** and the definition in **Section 2** make it abundantly clear that the Plaintiff herein fails the test ascribed in the **Modus Publication** case as the responses to the questions raised therein are in the negative. That it therefore follows that though being a body corporate created by statute, the Plaintiff does in fact have a right to sustain an action for libel having distinguished it from a public service corporation.

6.24. Further that the case of **Die spoorhoed v South African¹** Railways cited by the Defendant is distinguishable from the present case on the basis that the Respondent herein was a public service corporation charged with the responsibility to manage the National Railway System which function in keeping with the law of the country was vested in central government and that the same is true as regards the case of **National Pension Scheme Authority v Charles Mulupi and News Diggers Limited³**.

6.25. The view I take is that the pertinent question that ought to be addressed is not about incorporation by statute or whether or not the Plaintiff is a public service corporation as the Plaintiff has appeared to belabour and to make me believe. Neither is the issue about whether there is a distinction between democratically elected bodies whose mandate is to discharge administrative functions of central government on one hand and those of commercial corporate bodies created by statute whose mandate is to drive profit from their business on the other. The proper issue ought to be whether the Plaintiff was established to perform a function of a governmental nature. It is not in dispute that the Plaintiff is a body corporate established under **Section 3A of the Building Societies Act Chapter 412 of the Laws of Zambia** for purposes of raising a stock or such from which to make advances upon security either by way of mortgage or freehold or leasehold hold estate or in such manner as is permitted under the Act.

6.26. Indeed, exhibit **SN 1 (a) and (b)** which are extracts from the Plaintiff's Annual Reports for 2019 and 2020 show that the Plaintiff was established by the Government of the Republic of Zambia in 1968 with a mandate of mobilizing financial resources to invest in mortgages with the aim of increasing the country's housing stock. That the Society is solely owned by Government of the Republic of Zambia (GRZ) and that it is supervised by the Ministry of Finance. Further that the Society has in its financial reporting, applied the requirements of International Accounting Standards (IAS) for disclosure of related transactions for government related entities.

6.27. The inescapable conclusion I would reach from the foregoing is that while the Plaintiff is a body corporate engaged in commercial activity as rightly pointed out by the Plaintiff, it is an institution that performs a governmental function. It is my considered view that the case of **Metropolitan Saloon Omnibus Co. Limited**⁸ is inapplicable and can therefore not be of assistance to the Plaintiff. I find the Zimbabwean case of **Postal Communications Corporation v Modus Publication**⁹ persuasive instead.

6.28. The reliefs sought by the Plaintiff as endorsed on the Writ of Summons are for an Injunction and Damages for each of the alleged defamatory publications as properly set out in Paragraph 1.2 and 2.3 above. In my estimation, the rationale by the Learned authors of **Winfield and Jolowicz on Tort**, the case of **Die Spoorhoed v South African Railways**¹ which was

cited with the approval in **Derbyshire CC v Times Newspaper Limited**² for not allowing the government or its institutions to sue for defamation is that it would be contrary to public interest for institutions of central or local government to have any right to sue at common law for an action for defamation. I am not persuaded by the Plaintiff's arguments that these authorities can be distinguished from the present case.

6.29. This is the rationale adopted by the Court in the case of **National Pension Scheme Authority v Charles Mulupi and News Diggers**³ which I indicated I would revisit in **Paragraph 6.17** above. Though not binding on me, I find this case extremely persuasive and I have no hesitation in adopting it wholly on its holding below. The Court held among others that:

“Therefore, in line with the Derbyshire case, the Plaintiff being an institution that implements government policy and is therefore a government institution, cannot maintain an action for defamation. The first ground of the application succeeds”.

6.30. It would indeed be against public policy that a democratically elected government or indeed a government owned and controlled body should not be open to uninhibited criticism by members of the public who stand to be affected either directly or indirectly by the actions and/or omissions of incorporated bodies however occasioned. Admitting such actions as the one launched by the Plaintiff herein would place an undesirable

fetter on freedom of expression in a democratic dispensation. The 1st preliminary issue raised by the Defendant, namely whether the Plaintiff being a government owned and controlled entity has a right to bring an action in defamation has been answered in the negative and therefore this Question of Law in the Defendant's Application succeeds.

6.31. In the view that I have taken, the second issue whether the Plaintiff has *locus standi* to sue for defamation on account of the alleged defamatory statements which were directed at its officers and not the Plaintiff itself becomes academic and will not therefore be considered in great detail. This is because doing so will merely be an academic exercise which will not amount to anything. It is trite that Courts hand down decisions which are not meant to be academic but capable of enforcement based on a factual situation, the existence of which entitles a person to obtain from Court, a remedy against another as aptly held in the case of **Wise v EF Hervey Limited**¹⁷.

6.32. Suffice to say that it comports with legal logic and even common sense that if the Plaintiff can not maintain an action in defamation as I have found, it can not therefore maintain an action on behalf of its directors who act on its behalf in the scheme of things in relation to the distinct roles of the organs of an incorporated body as we know them in corporate law.

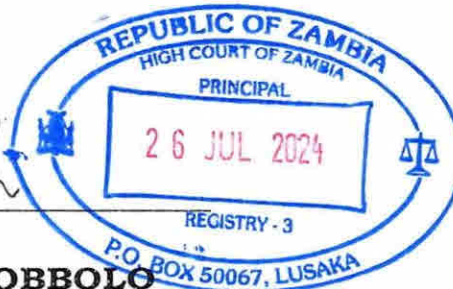
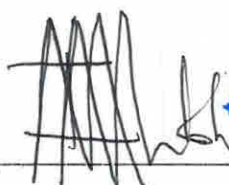
7.0 CONCLUSION

7.1. The Plaintiff though being a corporate body engaged in commercial activity is a government owned and controlled entity. That being the case, the Plaintiff cannot maintain an action for defamation.

7.2. I accordingly find this to be a suitable matter for determination without a full trial of the action in accordance with **Order 14A Rules 1 and 2 of the Rules of the Supreme Court, 1999.**

7.3. Costs are for the Defendant to taxed in default of agreement.

SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 26TH DAY OF JULY, 2024.



I. M. MABBOLOBOLO

HIGH COURT JUDGE.