

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2023/HP/147



BETWEEN:

DAVID OLIVER SAKALA

PLAINTIFF

AND

**AFRICAN BANKING CORPORATION T/A
ATLAS MARA BANK**

DEFENDANT

**Before the Honourable Ms. Justice S. Chocho, in Chambers, May 12th,
2025.**

For the Plaintiff:

*Mr. G. Chombo of Messrs Chombo and
Partners.*

For the Defendant:

*Ms. M. L. Nkode of Messrs Mweshi Banda and
associates.
Ms. C K Chanda from legal Counsel Defendant
Bank.*

JUDGMENT

Cases referred to:

- 1. *Wilson Masauso Zulu V Avondale Housing Project Limited (1982)*
ZR. 175.**
- 2. *Miller V Minister of Pensions (1947) 2 ALLER Page 374.***
- 3. *Inutu Etambuyu Suba Vs. Indo Bank Zambia Limited Selected
Judgment No. 52 of 2017.***
- 4. *SABZ Industries (Z) Limited Vs Edith Sakala (Appeal No. 137 of
2022.***

5. *Daniel Mwale V Njolomole Mtonga (sued as Administrator of the late Gabria Siwanamutenje Mtonga) Appeal No. 6 of 2012).*
6. *United Bank for Africa V M Ndalama Enterprises Limited (Appeal No. 324 of 2023).*
7. *Khalid Mohamed V. Attorney General (1982) ZR 49.*
8. *Ackim Chirwa, Levy Joseph Ngoma and U Fuel (Z) Limited Vs. Mini Mart Development Corporation Limited CAZ Appeal No. 68 of 2021.*

Legislations referred to:

1. *Section 47 (1) of the Banking and Financial Services Act Chapter 387 of the Laws of Zambia.*
2. *Section 3 of the Evidence (Bankers Book) Act.*
3. *Section 50 (1) and Section 54 of the Banking and Financial Services Act Chapter 7 of 2017.*

1. **INTRODUCTION**

1.1. This Judgment is in respect of the Plaintiff's claims as against the Defendant. The record will show that the Plaintiff by Writ of Summons and Statement of Claim dated January 31st, 2023 claims as follows:

- a) A declaration that the Defendant Bank statement produced on 1st February, 2007 was a misrepresentation of the Plaintiff's Personal Call Account opened on 12th April, 2000 and should be declared null and void.
- b) An Order that the Defendant re-constitute the Personal Call Account on the terms agreed with the Plaintiff on the 12th of

April, 2000 where the K1,000,000 Plaintiff's deposit would earn interest calculated at 15% per month by month basis.

- c) An Order that the Plaintiff be paid the money found due on the re-constructed Personal Call Account (100961504).
- d) Damages for breach of Contract for failure to keep the proper records of the Personal Call Account.
- e) Damages for breach of contract.
- f) Damages for loss of income.
- g) Any other relief the Court may deem fit.
- h) And costs of and incidental to these proceedings.

1.2. In response, the Defendant entered Appearance and filed Defence dated February 22nd, 2023. By that Defence the Defendant denied the Plaintiff's claims and averred that the Plaintiff's accounts were transactional/current accounts. The Defendant further averred that it is legally required to retain documents for 10 years and consequently the Plaintiff's demand for reconstruction of documents was made outside the retention period.

1.3. The Defendant further averred that the Plaintiff opened a Transactional Account and not a Term Deposit Account.

2. TRIAL COURSE

2.1. The matter was scheduled for trial and heard on October 22nd, 2024. The parties each called one witness in aid of their case.

2.2. The Plaintiff's witness was the Plaintiff himself one David Oliver Sakala.

2.3. PW testified in chief that on April 12th, 2000, he did approach the Defendant at its customer care office situate on Cairo Road and

enquired on long term bankable services for investment to earn interest for a period exceeding a year.

- 2.4. PW testified that he was advised on a facility called a Personal Call Account in which he could deposit money and only access interest without interfering with/withdrawing principal amount. That the Account would earn him interest of 15% per month and not attract any penalties, bank/ledger charges.
- 2.5. PW further testified that he was advised that the Personal Call Account had no time limit and could only be closed where its balance was below the book balance. He was also advised that the minimum book balance/deposit was K1,000,000.00 and he could only access the 15% monthly interest by opening a Personal Current Account to operate at zero basis account.
- 2.6. PW further testified that on April 12th, 2000, he opened the two accounts whose details were:
 1. Date of opening the Account: 12th April, 2000
Transaction No.: 0010316050007
Account Holders Name: David Oliver Sakala
Account Name: Personal Call Account
Account Number: 100961504
Amount deposited: K1,000,000,00
 2. Account No. 100961008
Account name: David Oliver Sakala
Transaction No. 00315040009
Opening balance: K100,000.00
Account type: Personal Current Account

- 2.7. PW testified that he deposited K1,000.000.00 (unrebased) and was issued with computer generated deposit slips as appears on pages 1 and 2 of the Plaintiff's bundle of documents.
- 2.8. PW testified that the Defendant's bank Manager told him to keep the deposit slips as the Defendant would not issue any further documents in connection to the accounts.
- 2.9. PW further testified that he was issued with a cheque book on the Personal Current Account, to be used to withdraw the accumulated interest in the Personal Call Account.
- 2.10. PW testified that he was directed to withdraw a sum of K100,000.00 (unrebased) for purposes of opening the Personal Current Account, which he only withdrew in May, 2000.
- 2.11. PW testified that he never again transacted on the Personal Call Account and he places his balances in May, 2000 on the Personal Call Account at K1,000,000.00 (unrebased) plus interest and zero balance on Personal Current Account.
- 2.12. PW further testified that by letter dated July 16th, 2020, 20 years from May 2000, the Defendant informed him that there was a conversion upload and a new account was opened for him on February 1st 2007 with a K30,000.00 (unrebased) credit with following details:
 3. Account No. 00101100961504
Account name: David Oliver Sakala
Transaction Description: Conversion Upload
Transaction Reference No.: 0011001070320182

Transaction date: 01 February 2007

- 2.13. PW testified that he did not believe the Defendant's explanation that the conversion upload was mere a system generation message showing migration status of an account from active to dormancy.
- 2.14. PW testified that the Defendant further explained that the Plaintiff's 2000 accounts were closed for dormancy as no transactions were recorded within 6 months and the accounts had accumulated transactional charges.
- 2.15. PW further testified that unsatisfied with the Defendant's explanations he appealed to the Bank of Zambia and the Defendant's response to the Bank of Zambia was same as their correspondence dated July 16th, 2020.
- 2.16. PW testified that the Defendant breached the fundamental principle of securing client's money when the Defendant unilaterally changed and created/destroyed an account without the Plaintiff's knowledge.
- 2.17. PW further testified that the Defendant has refused to avail him the bank statement showing all the transactions on the Personal Call Account.
- 2.18. Under cross examination, PW testified that he is of Counsel having practised as such for 28 years. He further confirmed that he has had a few dealings with banks.
- 2.19. PW conceded that he did not have evidence to prove the conditions/terms attached to the Personal Call Account, and the one-time withdrawal by cheque of K100,000.00 (unrebased).

- 2.20. PW further conceded that whilst his bundle of documents shows the cheque leaf, he did not provide in evidence the counter-folio and perforated side of the cheque which would show amount withdrawn.
- 2.21. PW conceded that he did not have evidence to show/prove that he maintained K1,000,000.00 (unrebased) in the account.
- 2.22. PW further testified that he did not have evidence to show/prove that the Bank of Zambia advised him to seek litigation as way to resolve his claims against the Defendant.
- 2.23. PW denied that the Bank of Zambia found no merit in his claims and that is why he did not have evidence of the Bank of Zambia conclusion.
- 2.24. PW further conceded that though he claims for Court to order reconstruction of his Personal Call Account, he could not state what this account would look like now or how much money he would have accrued after 20 years.
- 2.25. PW also conceded that the Defendant's employee whom he dealt with in 2000, did not provide him with information on how much he would expect from the investment account after 10 years.
- 2.26. In re-examination, PW clarified that the cheque book at page 6 of his bundle of documents was for the Personal Current Account and not the Personal Call Account.
- 2.27. PW further clarified that he deposited K100,000.00 (unrebased) into the Personal Current Account and withdrew K100,000.00 (unrebased) from the Personal Call Account.

- 2.28. PW clarified that his complaint to the Bank of Zambia was in writing and by a number of correspondences.
- 2.29. PW further clarified that K1,000,000.00 (unrebased) he put in the Personal Call Account was to accrue interest at rate of 15% per month.
- 2.30. The Plaintiff closed his case with one witness.
- 2.31. The Defendant also called one witness, DW Stephen Kabungo who testified on oath and witness statement dated May 19th, 2023.
- 2.32. DW testified in chief that he is the Complaints Manager in the Defendant Company since November, 2018.
- 2.33. DW testified that the Defendant does not have the records of the transactions on the Personal Current Account, the records are no longer available.
- 2.34. DW further testified that the Defendant responded to the Bank of Zambia via email as appears on page 4-5 of the Defendant's bundle of documents dated May 19th, 2023.
- 2.35. DW testified that the Plaintiff did not transact on the Personal Call Account apart from the deposit of K1,000,000.00 (unrebased) at opening. He testified that this amount began to deplete over the years due to transactional charges, maintenance fees and dormancy fees.
- 2.36. DW further testified that arising from the lack of transactions and monthly maintenance charges, the Personal Call Account depleted to K30,000.00 (unrebased) on February 1st, 2007 when it was

converted from active to dormant account status, making reference to page 3 of the Defendant's bundle of documents.

- 2.37. DW testified that the K30,000.00 (unrebased) was depleted by charges and fees until its closure on November 22nd, 2007 due to insufficient funds/balances.
- 2.38. DW testified that the term conversion upload is simply a system generated message showing that an account has migrated from a status of active to dormancy. This is the reason why the Defendant began to charge dormancy charges instead of monthly maintenance fees on the Personal call Account after 1st February, 2007, as shown on page 3 of the Defendant's bundle of documents.
- 2.39. DW further testified that the Defendant is by law required to retain records for a period of 10 years in accordance with the Banking and Financial Services Account Act. Denoting that the Defendant was not legally obliged to maintain accounts pertaining to the Personal Call Account beyond November 22nd, 2017.
- 2.40. DW testified that the Defendant did not have any documentary evidence of the Plaintiff's Personal Call Account and the Plaintiff when requested to, failed to provide the documentary evidence to collaborate his claims.
- 2.41. DW further testified that the Plaintiff misapprehended the nature of the Personal Call Account as it was a Transactional/Current Account and not a Term Deposit Account. That the Plaintiff also misapprehended the import of the conversion upload.

- 2.42. Under cross examination, DW testified that the Plaintiff's Personal Call Account depleted on fact that the account attracted charges maintenance charges.
- 2.43. DW testified that there was no 15% interest accruing on the Personal Call Account. That this was not an Investment Account.
- 2.44. DW testified that an account which is supposed to be an Investment Account could also operate as a Current Account (Personal Call Account).
- 2.45. DW conceded that the Plaintiff deposited K1,000,000.00 (unrebased)/K100,000.00 into the Personal Call Account and K100,000.00 (unrebased) into the Personal Current Account.
- 2.46. DW testified that based on the claimed interest rate of 15% per month, the Plaintiff's interest after a month would have been K150,000.00 (unrebased) and in 6 months K1,900.00 (unrebased) would have been account balance depending on monthly charges.
- 2.47. DW testified that the Plaintiff's account was depleted by ledger fees and dormancy fees.
- 2.48. DW conceded that the Defendant did not have documentary evidence to show that Plaintiff was notified of the depleting status of the account.
- 2.49. DW testified that the 10 years retention of records period, count started from date account was closed. That the Defendant had no correspondence on record between 2007 to 2017.
- 2.50. DW testified that page 3 of the Defendant's bundle of documents shows entries on the Personal Call Account in reference to 2007.

- 2.51. DW conceded that the Plaintiff had right to ask for explanation in 2020 but there was no merit in him coming after 20 years.
- 2.52. In re-examination, DW clarified that the Plaintiff opened a Personal Call Account depositing K1,000,000.00 (unrebased) and further that the claimed 15% monthly interest is inaccurate. That the Plaintiff deposited K100,000.00 (unrebased) in the Personal Current Account.
- 2.53. DW further confirmed that he had and has never heard of a Personal Call Account attracting 15% monthly interest hence, he termed the interest rate 'imaginary'.
- 2.54. The Defendant closed its case.
- 2.55. The Court asked DW to clarify for the record the terms of what he referred to a Personal Call Account which doubles as a Personal Current Account.
- 2.56. DW explained that the way a Personal Call Account operates is that it is both a savings and current account.

By Savings Account it attracts interest if you maintain a threshold and if you go below it then no interest is earned.

By Current Account in sense that you can withdraw at any given time thereby attracting transactional fees and monthly ledger fees.

That interest rate ranges from 1% - 5% annually.

3. LAW AND SUBMISSIONS

3.1. The Parties filed their written submissions for which I am grateful. The Plaintiff filed his submissions on November 22nd, 2024, and the Defendant filed its submissions on December 27th, 2024.

3.2. The Plaintiff submits that he has proved his claims on a balance of probability particularly the following:

- a) The Defendant's bank statement produced on 1st February, 2007 was a misrepresentation of the Plaintiff Personal Call Account opened on 12th April, 2000.
- b) The Defendant breached the terms upon which the opening of the Plaintiff's personal call account was agreed on, on understanding that the K1,000,000.00 Plaintiff's deposited with the Defendant would earn interest calculated at 15% on month-by-month basis.
- c) The Defendant breached its duty owed to the Plaintiff by failing to keep proper records of the Personal Call Account.
- d) The Defendant breach its duty owed to the Plaintiff by closing the call account and failing to inform the Plaintiff about the closure.

3.3. The Plaintiff relies on the following authorities:

- **Wilson Masauso Zulu V Avondale Housing Project Limited (1982) ZR. 175.**
- **Miller V Minister of Pensions (1947) 2 ALLER Page 374.**

Which provides that;

“This means that the case must be decided in favour of the man unless the evidence against him reaches the

same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not."

3.4. The Plaintiff further submits that the banker/customer relationship between the Defendant and Plaintiff has been evidenced. That the Defendant did not perform its duties in good faith, without negligence and exercise such care and skill as would be exercised by a reasonable banker. Reference was made to the case of **Inutu Etambuyu Suba Vs. Indo Bank Zambia Limited Selected Judgment No. 52 of 2017**.

3.5. The Plaintiff submits that the Defendant breached its statutory duty to the Plaintiff and relies on **Section 47 (1) of the Banking and Financial Services Act Chapter 387 of the Laws of Zambia**, provides:

(1) "When a bank or financial institution opens a new account for a person, it shall, at the same time, provide the person in writing with;

- a) a statement of all charges for maintaining the account and accessing the funds on account;*
- b) a statement of the interest to be paid by the bank or institution; and*

c) a statement of how the bank or institution will advise the person of any new charges or changes in the charges or interest disclosed.”

- 3.6. The Plaintiff submits that Judgment be found in his favour on all claims as per Writ of Summons.
- 3.7. In response the Defendant submits that the Plaintiff has failed his obligation to prove his case on a balance of probability and this must be resolved against the Plaintiff. The Defendant relies on a number of authorities among them **SABZ Industries (Z) Limited Vs Edith Sakala (Appeal No. 137 of 2022**, where the Court of Appeal held the following J11 to J12 that;

“We are of the considered view that even where the Appellant did not appear in the lower Court, the Court could only have found in favour of the complaint if it was satisfied that her claims had been proved to the requisite standard. It is trite as has been established by the cases of Wilson Masauso Zulu v Avondale Housing Project Limited, Kahalid Mohammed V The Attorney General and Clement H. Mweempe V The Attorney General and Others, that the burden of proof, rests with the Plaintiff, such that even in the face of a failed defence, the Plaintiff is not entitled to a Judgment in its favour until it has discharged that burden. From the evidence before us, the Respondent’s claims were the following:

Leave days- there was no evidence or statements produced by her to show how or where the 18-day

figure was arrived at. To the contrary, the detailed record filed by the Appellant, at page 52 of the Record of Appeal, confirmed that she had no leave days at the end of December, 2020. We have no hesitation in setting aside this finding of the lower Court.

Her claim for separation package and or salary for the month of January, 2021, cannot be sustained as it is also noted that in paragraph 6 of her affidavit, she confirms having tendered her resignation, by letter dated 8th January, 2021. There was no evidence placed before the lower Court, for it to be sustained by the Appellate Court, especially in the face of allegations of loss including her own exculpatory letter of 21st January, 2021. See page 24 of the Record of appeal. To the extent that she has also exhibited the disciplinary code, as an annexure to the contract of employment, and copies of letters exchanged between her and the Appellant company on page 27 of the Record of Appeal, the lower Court misdirected itself in finding for her and awarding her with claims not pleaded or proved to the requisite standard.”

The Defendant submits that the Plaintiff has not produced any documentary proof/evidence to prove his claims. Further that it is settled legal principle that ‘He that alleges must prove.’

- 3.8. The Defendant further submits that the Plaintiff's burden of proving his case cannot be said to be discharged simply because the Defendant's defence has weaknesses.
- 3.9. The Defendant submits that the doubts and inconsistencies in the Plaintiff's case and evidence ought to be resolved against the Plaintiff. Reference is made to the various 'interest rates' the Plaintiff speaks to 15% to 25%, 12%.
- 3.10. The Defendant submits that this Court ought to make intelligent inferences where there are shortcomings in evidence. In referencing to the Plaintiff's failure to show/provide via the cheque book counter folio and other pages to show how much was withdrawn from the Call Account.
- 3.11. The Defendant further submits that pursuant to **Section 3 of the Evidence (Bankers Book) Act** at page 4 provides that;
- “A copy of any entries in a banker's book shall be received as prima facie evidence of such entry and of the matters, transactions and amounts therein recorded.”***
- 3.12. The Defendant submits that it is not legally required to retain documents on accounts over 10-year period. Reference made to **Section 50 (1) and Section 54 of the Banking and Financial Services Act Chapter 7 of 2017.**
- 3.13. The Defendant further submits that the provisions as stated in 3.12 above presents the Defendant bank with valid defence for not having the documents/records (full statements) as refers to the Plaintiff's accounts. That the Defendant has no obligation to retain

records after 10 years. Reference was made to the case of **Daniel Mwale V Njolomole Mtonga** (sued as Administrator of the late **Gabria Siwanamutenje Mtonga**) **Appeal No. 6 of 2012**), the Supreme Court stated that;

“In our view, the issue of statutory bar when raised is as much about the jurisdiction of the Court as it is a statutory defence for a party. It is a legal point touching on both the Court’s jurisdiction and a provision of a statute.”

3.14. The Defendant further urges this Court to resolve this action by also applying general business sense to the allegations raised by the Plaintiff. That the 15% monthly interest rate vs explanation for the depletion of the account funds. Reference was had to the case of **United Bank for Africa V M Ndalama Enterprises Limited (Appeal No. 324 of 2023)** the Court of Appeal stated thus;

“Under the circumstances, we agree with the respondent that the parties intended to use the minimum fee of ZMW15.00 per farmer, as they awaited settling of the per-farmer fee for the season to be fixed by the Ministry of Finance or Ministry of Agriculture. This makes business sense because the respondent needed funds to continue performing the contract.”

3.15. The Defendant urges the Court to dismiss the Plaintiff’s case as clearly, he misunderstood the nature, purpose and function of the account he opened with the Defendant.

4. COURT'S ANALYSIS DECISION

4.1. The clear and undisputed facts in this case are as follows:-

- i. That the Plaintiff and Defendant had a banker and Customer relationship between April 12th, 2000 and November 27th, 2007.
- ii. That the Plaintiff opened two accounts on April 12th, 2000 being:
 - Personal Call Account No. 1009161504 (with deposit of K1,000,000.00 unrebased)
 - Personal Current Account No. 1009161008 (with deposit of K100,000.00 unrebased)
- iii. That the Defendant closed the account on November 27th, 2007.
- iv. That the Defendant does not have records on the accounts save for system generated documents at page 3 of the Defendant's bundle of documents.

4.2. The disputed facts are:-

- i. Whether/not the Personal Call Account was to attract monthly interest rate at 15%.
- ii. Whether/not the Personal Call Account was an investment account.
- iii. Whether/not the Plaintiff is entitled to an order for reconstruction of the Personal Call Account.
- iv. Whether/not the Defendant is entitled to not produce documents outside the retention period.

- 4.3. I shall deal points 4.2 (1) and 4.2 (ii) together as they are related and speak to the terms/conditions of the Personal Call Account.
- 4.4. From the evidence and facts on record it is clear to me that the only discernible fact is that a Personal Call Account with initial deposit of K1,000,000.00 (unrebated) was opened by the Plaintiff. The Plaintiff in his own testimony admits that aside from document at page 1-4 of his bundle of documents, he does not have any documentary evidence of the terms/conditions of the accounts particularly the Personal Call Account. The Plaintiff claims that the Defendant's unnamed agent told him the account would earn him monthly interest at 15% over an unspecified period and would attract no bank/maintenance charges. He confirms that he was told that no other documents would be given to evidence the account.
- 4.5. I find that the Plaintiff has failed to prove his case on a balance of probabilities, the terms and conditions of the Personal Call Account, were interest would be earned at 15% per month or 180% annually. No stretch of the imagination would point/presuppose an interest rate that high whether the account be an investment, savings/current account.

It is my considered opinion that the Plaintiff is not an ordinary man on the street and by his training/practice alone should have asked for written terms/contract to evidence the terms he urges this Court to believe on both accounts. **Section 47 (1) Banking Financial Chapter 387** is clear that such detail must be provided and the Plaintiff has not shown such documents to show terms and conditions.

4.6. It is trite that “he who alleges must prove” and in casu the Plaintiff has failed to prove this claim. I am forfeited in my decision by the authority in the celebrated case of **Khalid Mohamed V. Attorney General (1982) ZR 49** and the case of **Ackim Chirwa, Levy Joseph Ngoma and U Fuel (Z) Limited Vs. Mini Mart Development Corporation Limited CAZ Appeal No. 68 of 2021**. The Court of Appeal stated that a party must prove their claim and cannot automatically be entitled to Judgment even where the other party’s defence fails.

4.7. I am inclined to believe the Defendant’s submission that the Personal Call Account was a current account and was dormant for a period of its existence. The question that needs to be answered is whether it was reasonable for the Defendant to not seek out/inform the Plaintiff the repercussions of a dormant account.

The Defendant submits that after a period of 7 years of inactivity and dormancy, it closed the account in 2007. I am of the considered opinion that the 7-year inactivity on the account ought to have aroused doubts in the banker’s mind and caused them to make an inquiry on the Plaintiff. The Defendant owed the Plaintiff duty to inform him of the consequences of the dormancy/in activity on his account and more so when the Defendant closed the account on November 27th, 2007. The record shows that the Defendant only informed the Plaintiff upon his demand for an explanation in 2020, when he alleges to have come to the knowledge of what transpired on the account/s.

I find that the Defendant breached its statutory duty to act in good faith. The Defendant acted negligently and did not exercise due

care and skill expected of a reasonable banker. I am forfeited by the authority in the case of **Stanbic Bank Zambia Limited V. Attorney General and C Enterprise and Others (2008) ZR** we said:

“A banker is under a statutory duty to act in good faith and without negligence and to exercise such care and skill as would be exercised by a reasonable banker...”

“The test of negligence is whether the transaction of paying... coupled with the circumstances antecedent and present was so out of the ordinary course that it ought to have aroused doubts in the banker’s mind and caused them to make an enquiry.”

4.8. **Section 3 of the evidence (Bankers Books) Act** provides

“A copy of any entries in a banker’s book shall be received as prima facie evidence of such entry and of the matters transactions and amounts therein recorded.”

The Defendant by page 3 of their bundle of documents, indicates an opening balance of K30,000.00 (unrebased) as at February 1st, 2007, which amount DW testified was fully applied to ledger fees and dormancy fees.

I opine that the Defendant should have even at this point sought out the Plaintiff to advise him on the happenings/not of his account. The Plaintiff was not given chance to decide whether to maintain his account or not.

I find that the Plaintiff is entitled to damages for the Defendant's negligence in not advising him on the account and the repercussions of no activity and more so closure of the account.

- 4.9. The Plaintiff seeks an order for damages for breach of contract for the Defendant's failure to keep the proper records of the Personal Call Account. The Defendant submits that the law provides that bank account records are to be maintained for 7/10 years.

The Banking and Financial Services Act No. 7 of 2017 under Section 50 (1) provides:

“A financial service provider shall retain a register or record for a period of 10 years.”

I am of the firm opinion that the Defendant is under no duty to show/provide account details over the retention period of 10 years. As decided in 4.8 above the report on page 3 of the Defendant's bundle of documents is prima facie evidence of amount in the Plaintiff's account as at that date.

5. **CONCLUSION**

- 5.1. For the foregoing reasons, I find that the Defendant is liable to the Plaintiff for its failure to notify the customer of its intention to close the account. I order a nominal sum of K3,000.00 for damages.
- 5.2. On a balance of probability, I find that the Plaintiff has failed to prove the rest of his claims and thereby the claims fail.

J23

5.3. Costs are awarded to the Defendant to be taxed in default of agreement.

5.4. Leave to appeal is granted.

Delivered at Lusaka on May 12th, 2025



**S. CHOCHO
JUDGE**

