IT

IN THE HIGH COURT FOR ZAMBIA **2023/HP/A001**

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

ANDERSON & ANDERSON VALUATION SURVEYORS **APPELLANT**

AND

THE FINANCIAL INTELLIGENCE CENTRE **RESPONDENT**

Before the Hon. Mr. Justice M.D. Bowa on the 31st January, 2024

For the Appellant: Mrs. F. Chiponga of Nhari Advocates
For the Respondent: Mrs. C. Kalemba in House Counsel

JUDGMENT

Cases referred to:

1. *Re HK (An Infant) (1967)*
2. *Shamwana vs. Mwanawasa (1993-1994)Z.R 149*
3. *R vs. Cambridge University (1723)*
4. *Zinka vs. The Attorney General (1990-1992)Z.R 73*
5. *Attorney General for Hong Kong vs. Ng Yuen Shiu (1983)2 AC 629*
6. *Local Government Board vs. Arlidge (1915) A.C 120.*
7. *Dr. Sylvester Mudzibairi Msahamba vs. The Council of the Copperbelt University SCZ/8/262/2011*
8. *Council of Civil Service Unions v Minister for the Civil Service (The GCHQ case) [1985] AC 374, [1985] ICR 14*

1.0 Background

1.1 The matter comes by way of an appeal against the decision of the Financial Intelligence Centre rendered on the 8th of December, 2022. The brief facts are that on the 24th of June, 2020, the Respondent issued a compliance order to the Appellant in which it directed the Appellant in accordance with the provisions of section 37C of the Financial Intelligence Centre Amendment Act No. 4 of 2016 to remedy breaches identified during a thematic off-site inspection of the real estate sector from August to December, 2018 within 5 months of the receipt of the said order. Further on 22nd March, 2022 the Respondent issued a decision of non-compliance with the compliance order in which it observed that the Appellant breached the compliance order by not addressing the identified deficiencies.

1.2 The Respondent thereby proceeded to impose an administrative sanction in the form of a financial penalty of five thousand penalty units which translates to Zambian Kwacha One Hundred and Fifty Thousand (ZMW 150, 000.00) to be paid within 30 days of receipt of the said decision.

1.3 That on the 22nd of April, 2022 the Respondent issued another decision of non-compliance in which it suspended the sanction issued in its decision having considered the extenuating factors in the real estate sector and gave the Appellant fourteen (14) days in which to remedy the said deficiencies failure to which the sanction will be activated.

1.4 That on the 17th of June, 2022 the Respondent issued a Breach Notice to the Appellant alleging failure by the Appellant to address the deficiencies identified and asked the Appellant to show cause why it should not be sanctioned. That on the 6th July, 2022, the Appellant submitted a compliance response in respect to the alleged deficiencies and further sought the indulgence of the Respondent. Notwithstanding the Appellant's response, the Respondent issued a decision on the non-compliance which it sanctioned the Appellant for breaching section 37C of the Financial Intelligence Centre Act No. 46 of 2010 in form of a financial penalty amounting to ZMW 150, 000.00.

1.5 Unhappy with the decision of the Respondent, the Appellant has launched this appeal on the following grounds;

(1) That the Financial Intelligence Centre erred in law and fact when it did not give the Appellant an opportunity or reasonable opportunity to be heard prior to the decision;

(2) That the Financial Intelligence Centre erred in law and fact when it did not give the Appellant an opportunity to present facts in mitigation before the fine of Zambian Kwacha One Hundred and Fifty Thousand (ZMW150,000.00) was imposed upon the Appellant.

(3) That the Financial Intelligence Centre erred in law and fact as regards its finding that there was no known mitigating factors by the Appellant when in fact the Appellant had taken steps to remedy or remedied the deficiencies on or about 7th of July 2022 a matter that should have been taken into account in mitigation;

1.3 The Appellant thus seeks the following reliefs:

1. The setting aside of the decision of the Financial Intelligence Centre; and
2. Any other reliefs that the High Court may deem fit and just.

2.0 Submissions

Appellant's Submissions

2.1 It was submitted that Judicial redress may be sought when the decision of a public body such as the Respondent is arrived at with procedural impropriety or lack of fairness. It was argued that the decision of the Respondent was unfair and that the laid down procedure was not adhered to.

2.2 It was further submitted that the Respondent ought to have acted fairly. Reference was made to the case of **Re HK (An Infant)**[1] in which it was held that, whilst immigration officers were not obliged to hold a hearing, before deciding an immigrant's status, they were nevertheless under an obligation to act fairly.

2.3 It was argued that the requirements of fairness entail that where a body is exercising penal powers which involve the imposition of a penalty which is more severe than normally expected, it has to give the person affected the opportunity to make representations on the issue. Reference was made to the case **Shamwana vs. Mwanawasa**[2] in which it was held that:

"It is an elementary requirement of fairness and justice that as a general rule, both sides be afforded the opportunity to be heard."

2.4 reference was further made to an extract from the learned author Garner in his Administrative Law Book at page 127 where it states that:

"the effect of natural justice, is that the "judge" must hear both sides, must give each party a chance to state his case, and that any person who will or may be affected by an administrative decision has a right to his "day in court"."

2.5 Further reliance was placed on the case of **R vs. Cambridge University**[3] where the court of the King's Bench declared a decision of the University of Cambridge to be a nullity, because in depriving the Applicant of his degrees they had not first given him an opportunity of appearing before them and stating his case.

2.6 Reference was further made to the case of **Zinka vs. The Attorney General**[4] in which the Supreme Court held that:

"the Principles of natural justice are implicit in the concept of fair adjudication. These principles are substantive and are twofold , namely... and that no man shall be condemned unheard, that is,

parties shall be given adequate notice and opportunity to be heard (audi alteram partem)... if the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of a departure from the essential principles of justice. The decision must be declared to be no decision."

2.7 It was submitted that the responded rendered a decision against the Appellant without affording the Appellant an opportunity to be heard or to appear for the hearing or mitigating after the verdict of it being found guilty. That the act of the Respondent goes against the rules of natural justice.

2.8 It was argued that the decision at page 28 paragraph 4.1 of the record of appeal states that the Appellant did not respond to the Compliance Order neither did it address the deficiencies. That the same is not true as the Appellant did respond on the 6th of July, 2022 outlining the remedial measures it had taken but that the Respondent proceeded to render a decision without giving any reason as to why it ignored the Appellant's submissions.

2.9 It was further argued that a legitimate expectation will arise in the mind of the complainant whenever they have been led to understand by words or actions of the decision maker that certain procedures will be followed in reaching a decision. Reliance was placed on the case of **Attorney General for Hong Kong vs. Ng Yuen Shiu**[5] in which the Court ruled that there was no general right in an alien to have a hearing in accordance with the rules of natural justice. That nevertheless, a 'legitimate expectation' had been created in the mind of an immigrant and, accordingly, breach of the requirement of fairness justified the order for his removal from Hong Kong to be quashed.

2.10 It was submitted that the Appellant had a legitimate expectation that it will be called for a hearing after it made its submissions as evidenced from the letter at page 10 of the record of appeal. That in the same letter, the Appellant sought the indulgence of the Respondent and indicated it was available to provide additional information should the Respondent require it to do so. Further that it can be noted from the letter at page 30 of the record of appeal that the Appellant had an expectation that it

would be called for a hearing and that its submissions would have been considered.

2.11 It was further argued, that section 37C of the Financial Intelligence Centre Act 2010 as amended by Act No. 4 of 2016 pursuant to which the compliance order was issued expressly provides for the procedure to be followed. The section provides as follows:

37C. (1) The Director-General may, where the Director General reasonably determines that any condition of a directive issued under this Act has been breached, serve a compliance order on the reporting entity requiring the reporting entity to remedy the breach within the period stipulated in the order. (2) A compliance order issued under subsection (1) may— (a) suspend a business activity of a reporting entity or person with immediate effect if the Director General considers that the suspension is necessary to prevent or mitigate an imminent risk of significant adverse effects of money laundering and financing of terrorism or proliferation occurring; or (b) require the reporting entity or person to take specified measures to prevent or abate any adverse effect. (3) The Centre may, where a reporting entity fails to comply with a compliance order take the necessary steps to remedy the breach and recover the cost from the reporting entity. (4) A reporting entity or person in respect of which a compliance order is served shall comply with the requirements of the order by the date specified in the order and if no date is specified, the person shall comply with the order

immediately. (5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both. (6) If the reporting entity or person fails to comply with a requirement specified in the compliance order within the specified time, the reporting entity or person is liable to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

2.12 It was argued that a careful reading of the section above reveals that subsection (5) provides for the penalty for failure to comply with subsection (4) which provides for the requirement to comply with a compliance order, as was the case *in casu*. It was submitted that the Respondent's act of rendering a decision after invoking the provisions of section 37C was not only illegal but void ab initio as it is trite law that only a court of competent jurisdiction can convict and thereafter impose a custodial sentence or fine a person.

2.13 It was submitted that the fine imposed of Five Hundred Thousand Penalty units which translates into Zambia Kwacha One Hundred and Fifty Thousand (ZMW 150, 000.00) exceeds the maximum fine provided in subsection (6) which is Three

Hundred Thousand penalty units which translates into Zambian Kwacha Ninety Thousand (ZMW 90, 000.00). It was argued that the Respondent usurped the power of the Courts of law without a legal justification.

Respondent's Submissions

2.14 It was submitted that the Respondent is well aware that judicial redress maybe sought when the decision of a public body is arrived at due to procedural impropriety or lack of fairness. Further that the Respondent disputes the assertion that the Respondent's decision was unfair and did not adhere to the laid down procedure.

2.15 It was argued that the grounds of appeal advanced by the Appellant arise from a misapprehension of facts and lack of appreciation of the Financial Intelligence Centre Act No. 46 of 2010 as Amended as it relates to the Respondent's mandate to enforce compliance to its orders by all reporting entities.

2.16 It was further submitted that the Respondent undertook an offsite thematic inspection of twenty-one entities in the Real Estate Sector from August, 2018 to December, 2018 pursuant

to section 5 (3)(g) as read together with Section 11(B) (1) of the Financial Intelligence Centre Act of 2010. It was argued that the Respondent's decision at page 25 of the record of appeal was arrived at following the conclusion of the inspection. Further that the findings and a directive to remedy the identified deficiencies were availed to the Appellant on 6th of March, 2019.

2.17 It was submitted that the Respondent followed up with the Appellant on 30th January, 2020 to establish whether the identified deficiencies had been addressed to which correspondence the Appellant did not respond. It was argued that the failure by the Appellant to respond to the correspondence was indeed a missed opportunity to be heard on their part and that the Appellant cannot rely on its own shortcomings and wrongdoing to allege purported unfairness or at all.

2.18 It was argued that it was only upon establishing that the Appellant had not addressed the identified deficiencies that the Respondent then proceeded to issue a compliance order to the Appellant pursuant to section 37C(1) of the FIC Act requesting

the Appellant to remedy the deficiencies identified during the inspection within the extended period of five months from the date of receipt of the Compliance order. Further that a Compliance Order is one of the first lines that the Respondent uses to enforce compliance with the FIC Act. Reference was made to section 37(C) (1) which provides that:

"The Director-General may, where the Director-General reasonably determines that any condition of a directive issued under this Act has been breached, serve a compliance order on the reporting entity requiring the reporting entity to remedy the breach within the period stipulated in the order."

2.19 It was argued that a period of five moths given to the Appellant was yet another opportunity for the Appellant to be heard which was ignored. Further that the Respondent agrees with the position as stated in the *Shamwana vs. Mwanawasa (supra)* that it is an elementary requirement of fairness and justice that as a general rule both sides be afforded an opportunity to be heard.

2.20 It was submitted that in upholding the principle of fairness and justice, the Respondent not only orally heard the Appellant on

the 14th of April, 2022, (a fact stated in the Breach Notice that appears at page 8 of the record of appeal and not denied by the Appellant) but that it also availed the Appellant numerous other opportunities to be heard as demonstrated.

2.21 Reference was made to the case of **Local Government Board vs. Arlidge**[6] in which the Court stated that a right of appeal against the exercise of a statutory authority requires no general right to an oral hearing before an administrative decision maker. The Court stated that right to be heard does not necessarily mean one must be heard orally. It was argued that the Appellant was availed multiple opportunities to be heard by way of the numerous times they were written to and given sufficient timeframe within which to respond.

2.22 Further that following the oral hearing of the 14th of April, 2022, it was in the interest of justice and in the exercise of fairness that the Respondent as per contents of the letter appearing at page 6 of the record of appeal wrote to the Appellant on the 20th of April, 2022 notifying them that the sanction imposed on the 22nd of March, 2022 was being suspended to enable the

Appellant remedy the deficiencies within 14 days failure to which the sanction would be activated. It was argued that the 14 days given to the Appellant was yet another chance to be heard availed to them by the Respondent, which they refused or neglected to take advantage of.

2.23 It was further submitted that the Respondent only responded on the 7th of July, 2022 after the timeframe given had already lapsed. It was argued that the Appellant sat on its rights and cannot now successfully claim that the Respondent fettered its rights to be heard. Reference was made to the case of **Dr. Sylvester Mudzibairi Msahamba vs. The Council of the Copperbelt University**[7] in support of the above proposition, in which the Supreme Court ruled that an Appellant who had done nothing until the Respondent applied to have the matter dismissed for want of prosecution, could not then claim that the court below denied his right to be heard and right to have a fair hearing by granting the Respondents application to dismiss the matter for want of prosecution.

2.24 It was further argued that with regards the assertion that once the Appellant submitted their semblance of a Compliance Order they expected the Respondent to call them for a hearing despite the lapse of the 14 days shows their clear disregard of the Respondent's administrative sanctioning procedures as provided under section 49C(4). It was submitted that the Appellant moved at its own pace and expected the Respondent to dispense with the legally required timeline and afford it another hearing, failure to which it would be deemed that the Respondent violated the Appellant's right to be heard and to a fair hearing.

2.25 It was submitted that the procedural legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance of a decision being taken. It was submitted that the Respondent has demonstrated that it adhered to all the procedures required to be undertaken before taking the decision which led to the imposition of an administrative sanction. That it is actually the Appellant who

failed to ensure that they played their part in adequately fulfilling the procedures.

2.26 It was further argued that notwithstanding the fact that the Appellant failed to comply with the Respondent's directive within the stipulated timeframe, that what the Appellant contends in its compliance response appearing at page 16 of the record of appeal on the appointment of a compliance officer and on page 19 of the record of appeal pertaining to the development of its AML/CFT institutional policy respectively, had in actual fact not been done.

2.27 That the appointment of a Compliance officer is a mandatory legal required as per section 23(3) of the FIC Act. Further that to date the Respondent has not certified and approved any person as a compliance officer for the Appellant as is required by section 23(4)(C) of the FIC Act. It was submitted that the mere intimation by the Appellant of having designated a Mr. Musonda Kasase as its compliance officer as appears on page 16 of the record of appeal, without having him certified and

approved by the Respondent as required by the law is in breach of section 23(4) of the FIC Act.

2.28 It was submitted that the Respondent has no record of any request from the Appellant to have a compliance officer by the Centre. The Respondent further has no record of a compliance officer being approved on behalf of the Appellant. It was argued that the Appellant continues to be in breach of its legal obligations as per FIC Act and cannot therefore assert that the Respondent failed to take into consideration this particular alleged remedial measure.

2.29 It was further submitted that despite the Appellant's contention in its compliance response at page 19 of the Record of Appeal, that it developed institutional policies as required in section 23 (1) and (2) (a) of the FIC Act, it was the Respondent's position that it has not been availed any AML/CFT Institutional Policy by the Appellant.

2.30 It was argued that the mere intimation by the Appellant of having developed an AM/CFT institution policy without ever having availed it to the Respondent offers no proof to the

Respondent that this identified breach of section 23(1) and 2(a) of the FIC Act has been remedied. It was argued that the Appellant continues to be in breach of its legal obligations as per the FIC Act.

2.31 It was submitted that it is trite law that only a court of competent jurisdiction can convict a person deemed to have committed an offence and condemn them to a fine in this case not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both. It was argued that the Respondent appreciates that these powers are the preserve of the Court, further that it is cardinal in the determination of the appeal that the Court examines clearly the decision at page 26 of the Record of Appeal.

2.32 It was submitted that the Respondent clearly informed the Appellant that imposition of the administrative sanction was in accordance with section 49C(1) (f) of the FIC Act. It was argued that the imposition of an administrative sanction was as per section 49C(1) (f) and not section 37C(5) as alleged by the Appellant. Further that section 49C(1)(f) provides for a

maximum penalty of one million penalty units which translates into K 300,000.00. That the Respondent did not in fact impose the maximum allowable penalty but instead exercised leniency by imposing a financial penalty of K 150, 000.0. It was submitted that the Appellant's contention that the Respondent erred when it imposed a penalty of K 150, 000.00 as opposed to Maximum allowable amount of K 90, 000 as per section 37C (5) is misguided.

3.0 The Hearing

3.1 At the hearing Counsel for the Appellant Mrs. F. Chiponga entirely relied on the documents filed in support of the Appeal. Counsel for the Respondent Mrs. C. Kalemba equally relied on the heads of arguments filed in opposition and added that the Appellant citied and placed reliance on repealed law. She argued that the correct position was that administrative sanction imposed was pursuant to section 49(c), (f) as read with 47 (c) (3) and not 49(b) as stated by the Appellant.

3.2 It was argued that section 49(c), (f) is the law as it stands and that reference to section 49(b) stems from the Financial

Intelligence Center Act No. 46 of 2016 which was repealed by the Financial Intelligence Center Act No. 15 of 2020. That the new provision has substantially changed the previous position. Further that the imposition of the sanction was in 2022.

3.3 In reply Mrs. Chiponga argued that in spite of the submission by the Respondent, she noted that in the heads of arguments and list of authorities, the Respondent had actually cited the repealed law.

4.0 **Court's Consideration**

4.1 I have carefully considered the heads of arguments filed in support and against the appeal. The Appellant advanced three grounds of appeal which they argued as one, I shall in the like manner address the said grounds as one as well.

4.2 The questions for my determination as I see it are;

I. whether the Respondent acted within its mandate and according to its administrative procedures when it issued a non-compliance order against the Appellant and sanctioned

the Appellant for breaching section 37C of the Financial Intelligence Centre Act No. 46 of 2010.

II. Whether the Appellant ought to have been given an opportunity to be heard before the administrative sanction was given.

III. Whether the Respondent had a right to issue the administrative sanction.

4.3 Before I delve into the merit of the matter, I will first address the issue raised by the Respondent, which was that the Appellant citied and placed reliance on repealed law. The Appellant, in response argued that the Respondent in the heads of arguments and list of authorities equally cited the repealed law.

4.4 A perusal of the Respondent's Heads of arguments does reveal that the Respondent placed reliance on the Financial Intelligence Centre Act No. 46 of 2010 (as Amended). I note the provisions of the Financial Intelligence Centre (Amendment) Act, 2020 in the long title where it provides that this is an Act to amend the Financial Intelligence Centre Act, 2010.

4.5 Further the short title provides that:

"This Act may be cited as the Financial Intelligence Centre (Amendment) Act, 2020, and shall be read as one with the Financial Intelligence Centre Act, 2010, in this Act referred to as the principal Act."

4.6What this entails is that the Financial Intelligence Centre Act, 2010 was not repealed but rather amended. Further section 16 of the Interpretation and General Provisions Act, Cap 2 of the Laws of Zambia provides that:

"where one written law amends another written law, the amending law shall, so far as it is consistent with the tenor thereof, be construed as one with the amended written law"

4.7What the above provision denotes is that where a law has been amended, the amended law is to be read as one with the amending law in so far as the same is not inconsistent with the amending law. The provisions in the Financial Intelligence Centre (Amendment) Act, 2020 are therefore to be read together with the Financial Intelligence Centre Act, 2010. I invariably find that the issue raised by the Respondent is without merit.

4.8Moving on the substantive matter, I will first address the issue of whether the Respondent acted within its mandate and according

to its administrative procedures when it issued a non-compliance order against the Appellant and sanctioned the Appellant for breaching section 37C of the Financial Intelligence Centre Act No. 46 of 2010.

4.9 The Appellant contends that the Respondent erred in law and fact when it failed to give the Appellant an opportunity to be heard prior to its decision. Further that the Respondent's decision was unfair and that the laid down procedure was not adhered to by the Respondent. That the Appellant was never given an opportunity to be heard when it rendered its decision.

4.10 The Respondent on the other hand contends that it acted fairly and that it availed the Appellant numerous opportunities to be heard. The opportunities being that on the 6th of March, 2019, the Respondent wrote to the Appellant and made follow ups on the 30th of January, 2020. That the Appellant was given five months to remedy the deficiencies identified. That the five months was an opportunity given to the Appellant to be heard which the Appellant chose to ignore. Further that the Appellant was afforded an oral hearing on the 14th of April, 2022, in the interest of justice.

Reference was made to page 8 of the record of appeal as proof of the opportunity given to the Appellant to be heard.

4.11 The Appellant was thus issued with the compliance order in accordance with the section 37C of the FIC Amendment Act No. 4 of 2016 and ordered the Appellant to remedy the breaches within five months from the date of receipt of the compliance order.

4.12 Section 37C of the Fic Amendment Act. No. 4 of 2016 which was relied on by the Respondent in issuing the order provides that:

" The Director- General may, where the Director-General reasonably determines that any condition of a directive issued under this Act has been breached, serve a compliance order on the reporting entity requiring the reporting entity to remedy the breach within the period stipulated in the order."

4.13 A reading of section 37C shows that the Director-General has the power to issue an order to an entity where there is reason to believe that this entity has committed a breach. The order prescribes the period within the identified breaches should be remedied.

4.14 A perusal of the evidence before me at page 1 of the record of Appeal shows that the Respondent issued a compliance order on the Anti- Money Laundering/Countering the Financing of Terrorism Inspection against the Appellant on the 24th June, 2020.

4.15 The Respondent indicated that the order was in accordance with Section 11A and 11B of the FIC Amendment Act No. 4 of 2016 and pursuant to a thematic off-site inspection of the real estate sector conducted from August to December, 2018.

4.16 That inspection reports and directives were availed to the inspected institutions in March/April 2019. Further that 31st December, 2019 was given as the deadline in which to implement all the directives issued by the Respondent to the Inspected Institutions. That the Appellant was among institutions that were requested to implement the directives and that in January, 2020 a follow up was made but that the Appellant had not yet addressed the deficiencies identified.

4.17 Further the evidence on record in particular the documents at pages 1,4,6 and 8 shows communications made to the Appellant

to remedy the identified breaches in line with section 37C of the FIC No. 4 of 2016. It is my finding therefore that the Acting Director-General had the power to issue breach Notice to the Appellant herein.

4.18 Having found that the Respondent was within its powers to issue the Breach Notice, the next question is whether the Appellant ought to have been given an opportunity to be heard before the administrative sanction was given.

4.19 Section 37C (1) provides that the Director General shall give an entity time within which to remedy the identified breaches, that to me is the opportunity given to an entity to be heard. In this case the records shows as highlighted above at pages 1,4,6 and 8 the opportunities given to the Appellant to remedy the identified breaches as per thematic off-site inspection of the real estate sector conducted by the Respondent from August to December, 2018. The record will show only that the Appellant responded on the 6th of July, 2022 after the period within which they ought to have responded had lapsed.

4.20 I find that the Appellant was afforded opportunities to be heard and it opted not to respond within the periods it was given by the Respondent. I am persuaded by the case of *The Local Government Board vs. Arlidge* (supra) in which the Court held that right of appeal against the exercise of a statutory authority requires no general right to an oral hearing before an administrative decision maker, and a hearing on the paper may be perfectly fair for legal purposes.

4.21 The occasions on which the Appellant was written to and the oral hearing of the 14th of April which the Appellant has not disputed, goes to show that the Appellant was indeed given numerous opportunities to be heard. I therefore dismiss the Appellant's assertion that it was not given an opportunity to be heard.

4.22 Moving on to the issue of whether the Respondent had authority to issue the administrative sanction. The Appellant contends that the compliance order was issued pursuant to section 37C of the FIC Act No. 4 of 2016 and that in that section the power to impose a fine is on the Court and not the Respondent. The Respondent

on the other hand contends that the administrative sanction was issued pursuant section 49C (1) (f) of the FIC Act and not section 37C as alleged by the Appellant .

4.23. A perusal of the Respondent's decision appearing at page 25 of the record appeal in paragraph 4.1 subparagraph 2 shows that the section relied upon was section 49C (1) of the FIC Act which provides that:

> ***"Without prejudice to section 49B, the Centre or a supervisory authority may impose one or more of the following administrative sanctions in addition to an offence under this Act or where a person or reporting entity is in breach of a provision of this Act which is not a criminal offence:***
>
> **(f) a financial penalty not exceeding one million penalty units."**

4.24. A reading of section 49C(1)(f) shows that the Respondent has the power to issue administrative sanctions. Therefore, the Appellant 's argument that the Respondent's imposition of the administrative fine was illegal as it usurped the power of the court is misconceived. The answer to the third question posed therefore is that the Respondent did have power to impose the fine it imposed on the Appellant and that the said amount is

reasonable considering that the maximum penalty units it can issue under section 49C (1)(f) is one million penalty units.

4.25. Lastly by way of comment, on the issue of legitimate expectation and the request for mitigating factor, I agree with the Respondent that the response submitted by the Appellant on the 6th of July, 2022 was done outside the time given by the Respondent. In short the Appellant being a defaulting party as regards the Respondents sanctioning procedures cannot invoke the doctrine of legitimate expectation. In the case of ***Council of Civil Service Unions v Minister for the Civil Service***[8] the court had this to say:

"A procedural legitimate expectation by an individual or group rests on the presumption that the decision-maker will follow a certain procedure in advance of a decision being taken. This expectation can manifest in various ways, such as the expectation of being consulted of an inquiry being held of a fair hearing and of being allowed time to make representations, especially where the Appellant is seeking to persuade an authority to depart from a lawfully established policy."

4.26. The Appellant therefore having failed to remedy the identified breaches within the time stipulated in the various communications to it cannot rely on the doctrine of legitimate expectation.

4.27. On the issue of mitigating factors, it was the Respondent's position that the Appellant continues to be in breach of its legal obligations and as such it cannot request the Respondent to consider mitigatory factors. That the Appellant failed to respond within the stipulated timeframe. That the response appearing at page 16 of the record of appeal pertaining to the appointment of a compliance officer has in actual fact not been done.

4.28 The Respondent further contends that the appointment of a compliance officer is a mandatory legal requirement but that the Respondent has not certified and approved any person as compliance officer for the Appellant . That the intimation at page 16 of the record of appeal of the Appellant having designated someone as compliance officer without that person being certified and approved by the Respondent is in breach of the

law. The law in this regard being section 23 (3) (4) (c) of the FIC Act, which provides that:

"(3)A reporting entity shall designate a compliance officer at senior management level to be responsible for the implementation of, and ongoing compliance with this Act by that reporting entity. (4) A person shall not be designated as a compliance officer unless that person—

(c) is certified and approved by the Centre"

4.29. It is in this regard that I agree with the Respondent that the appointment of a compliance officer has to the certified and approved by the Respondent. In that respect the appointment of a compliance by the Appellant without certification and approval of the Respondent is of no effect.

4.30. It is the Respondent's further position that they have not been availed with any AML/CFT Institutional policy in line with section 23 (1) and 2 (a) of the FIC Act which provides that:

"(1) A reporting entity shall develop and implement programmes for the prevention of money laundering, financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation.

(2) A programme under subsection (1) shall include—

(a) internal policies, procedures and controls to fulfil obligations under this Act"

4.31. In light of the evidence before me as regards the alleged breach of section 23 of the FIC Act by the Appellant, I find that the Respondent's position and steps taken are justified and that the Appellant continues to be breach of the provisions of the FIC Act. In light of my finding, I dismiss on the Appellant 's appeal for lack of merit. I uphold the decision of the Respondent and order that the directives therein take effect. Costs to the Respondent to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka this 31st day of January 2024

HON. JUSTICE M.D BOWA