

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE ECONOMIC AND FINANCIAL**  
**CRIMES REGISTRY**  
**HOLDEN AT LUSAKA**  
(Civil Jurisdiction)



**2023/HPEF/28**

**IN THE MATTER OF: SECTIONS 60(a), (5), (6), AND (7) OF THE ANTI-CORRUPTION ACT NUMBER 3 OF 2012 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: SECTIONS 61(2) (7) OF THE ANTI-CORRUPTION ACT NUMBER 3 OF 2012**

**IN THE MATTER OF: SECTION 86 OF THE ANTI-CORRUPTION ACT NUMBER 3 OF 2012 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE RESTRICTION NOTICE ON SEVENDA SYSTEMS LIMITED'S UNITED STATES DOLLARS ACCOUNT HELD WITH THE ZAMBIA NATIONAL COMMERCIAL BANK PLC.**

**BETWEEN:**

**SAVENDA SYSTEMS LIMITED**

**APPLICANT**

**AND**

**THE ANTI-CORRUPTION COMMISSION**

**RESPONDENT**

**Before the Honourable Justices A. Malata-Ononuju, I. M. Mabbolobolo and S.V. Siloka on...12<sup>th</sup> Feb 2024**

*For the Applicant:*

*Mr. J. M. Katolo and Mr. P. G. Katupisha - Messrs. Milner & Paul Legal Practitioners.*

For the Respondent: Ms. S. Mutamina and Mr. K. Lukama - Anti-Corruption Commission.

---

## JUDGMENT

---

### **A. MALATA- ONONUJU J., DELIVERED THE JUDGMENT OF THE COURT.**

#### **Cases referred to:**

1. *New Plast Industries Vs The Commissioner of Lands and The Attorney-General (2001) Z. R. 51;*
2. *B. P. Zambia Plc Vs Zambia Competition Commission, Total Aviation and Export Limited and Total Zambia Limited (2011) Z. R. 222;*
3. *Queen Vs The Judge of the City of London Court (1892) Q. B. 273;*
4. *Matilda Mutale Vs Attorney-General and Emanuel Munaile (2007) Z. R. 120 S. C.*
5. *The Attorney-General & Another Vs Lewanika and Four Others (1993-1994) Z. R. 164;*
6. *Kalandanya and Others Vs the Attorney-General and Others 2022/HPEF/10;*
7. *Godfrey Shamanena Vs Anti-Corruption Commission and The Zambia National Commercial Bank Plc. 2022/HB/91;*
8. *Ronald Kaoma Chitotela Vs The Anti-Corruption Commission 2022/HP/096;*
9. *Anti-Corruption Commission Vs Barnet Development Corporation Ltd. S. C. Z. No.5 of 2008;10.*
10. *The Anti-Corruption Commission Vs Ngona Mwelwa Chibesakunda S. C. Z Appeal No. 99 of 2003;*
11. *Access Bank (Zambia) Group Vs Group Five/ZCON Business Park Joint Venture (2016) ZMSC 24;12.*
12. *NFC Mining Plc Vs Techpro Zambia Limited SCJ No. 22 of 2009;13.1*

13. *Savenda Management Services Vs Stanbic Bank Zambia Ltd S. C. Z. Appeal No. 37 of 2017;*
14. *Phillip Mhango Vs Dorothy Ngulube and Another (1983) Z. R. 61 (S. C.)*

**Legislation referred to:**

1. *The Anti-Corruption Act Number 3 of 2012 of the Laws of Zambia;*
2. *Prohibition and Prevention of Money Laundering Act, Number 14 of 2001 of the Laws of Zambia;*
3. *The High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia;*
4. *Narcotic Drugs and Psychotropic Substances Act Number 35 of 2021 of the Laws of Zambia.*

**1. INTRODUCTINON**

1.1 On 6<sup>th</sup> July, 2023, the Applicant filed Originating Summons pursuant to **Section 60(a) (5), (6) and (7), Section 61(2), and (7)** as read together with **sub-section (4)**, and **Section 86** all of the **Anti-Corruption Act No. 3 of 2012 of the Laws of Zambia** (the Act) in relation to the Restriction Notice on Savenda Systems Limited's United States Dollar (USD) account held with the Zambia National Commercial Bank (ZANACO) Plc.

1.2 The Applicant filed for the following reliefs:

- i. *An order that the Respondent's restriction of (on) the Applicant Account No. 5727652500219 held at the Zambia National Commercial Bank Plc for the purposes of investigations which have to date not commenced, goes against the provisions of the **Anti-Corruption Act***

- (The Act) and is therefore irregular and null and void ab initio for want of service on the Applicant;
- ii. An order that the Respondent's failure to serve the Restriction Notice on the Applicant as required by law renders the Restriction Notice null and void;
  - iii. An order that the restriction on the Applicant's USD Dollar project account number 5727652500219 held with the Zambia National Commercial Bank Plc be lifted with immediate effect;
  - iv. An Order that the Applicant is entitled to a payment of the sum of USD 4,749,070.17 (four million, seven hundred and forty-nine thousand and seventy United States Dollars and seventeen cents) the same being the total loss suffered on account of the restriction placed by the Respondent;
  - v. Costs of and incidental to these proceedings; and
  - vi. Any other relief the Court may deem fit.

## **2. AFFIDAVIT EVIDENCE IN SUPPORT**

- 2.1 The Originating Summons was accompanied by an Affidavit in Support of even date sworn by Clever Mpoha, a Zambian national and shareholder in the Applicant Company.
- 2.2 Clever Mpoha deposed that on 18<sup>th</sup> August, 2022, the Respondent placed a Restriction Notice on the Applicant's USD project bank account No 5727652500219 held with ZANACO and issued a Notice of Restriction of Account to the

Bank. That the Applicant was informed of its account being restricted by way of letter from ZANACO and not by the Respondent who had a duty under the law to effect service of the Restriction Notice on the Applicant.

- 2.3 The Deponent averred that it is a mandatory requirement for the Restriction Notice to have been served on the Applicant Company by the Respondent in the same manner it was served on the Bank before the said Restriction Notice can take effect.
- 2.4 That following the receipt of the letter from ZANACO informing the Applicant of the Restriction Notice, the Applicant, through its Advocates, authored a letter as per exhibit "**CM1**" dated 23<sup>rd</sup> August, 2022, to the Attorney-General as well as the Respondent advising that the restricted account is an operational account supporting various Company activities and projects as well as Third-Party funds relating to the Applicant's international clients. It was deposed that the letter sought to find ways in which the restricted funds could be treated without affecting the operations of the Applicant.
- 2.5 It was deposed that a letter exhibit "**CM2**" dated 25<sup>th</sup> August, 2022, was written to the Respondent by the Applicant's Advocates indicating activities that required funds immediately, in particular payment of August, 2022, salaries in the sum of USD 379,870.00 and air tickets and costs

related to an international visiting team in the sum of USD 105,000.00.

- 2.6 The Deponent averred that by a letter exhibited “**CM3**” dated 25<sup>th</sup> August, 2022, the Respondent wrote to the Applicant’s Advocate stating that it was investigating offences reasonably suspected to have been committed under **the Act** and further proposed a date to meet with the Applicant’s Advocates to discuss the Applicant’s request.
- 2.7 It was avowed that a meeting was held at the Respondent’s Offices where the Respondent requested for a list of activities in relation to the funds be availed to them despite the fact that a list had already been given to the Respondent by the Applicant.
- 2.8 Clever Mpotha deposed that by a letter exhibited “**CM4**” dated 14<sup>th</sup> September, 2022, the Applicant’s Advocates wrote to the Respondent advising that specific details relating to the Applicant Company employees and other operational requirements could not be submitted as requested owing to constitutional privacy principles, trade secrets and security and confidentiality considerations. That to date, there has been no response to that letter.
- 2.9 The Deponent averred that on 12<sup>th</sup> October, 2022, the Respondent issued a letter exhibited “**CM5(a-b)**” to ZANACO directing that the sum of K2,768,982.75 be transferred directly to the Zambia Revenue Authority for income tax for the year 2021. That this was not done in consultation with

the Applicant and was purported to have been done in exercise of powers conferred under **Section 61(1) of the Act.**

2.10 It was averred that the placing of the Restriction Notice on the account was unreasonable and illegal as there were no investigations against the Applicant relating to the funds in the bank account held at ZANACO which would give rise to a Restriction Notice. It was deposed that the only investigation the Deponent was aware of is a matter involving the Deponent and a company called Eagle Trading International Limited which is currently in Court. That there are no reasonable grounds that exist or existed to warrant the restriction of the Applicant's accounts.

2.11 The Deponent deposed that the restrictions, without consideration of the fact that the Applicant is a going concern, see the Respondent putting the Applicant under constructive liquidation with the Respondent as self-appointed Liquidator as evidenced by the arbitrary instructions to ZANACO for the transfer of funds to the Zambia Revenue Authority for the income tax without any tax assessment being carried out. That it is unconscionable and illogical that funds allegedly suspected to arise from proceeds of crime are being subjected to income tax whilst investigations are allegedly being carried out.

2.12 That the Respondent's action in directing the payment of income tax on funds held in the Applicant's account in itself demonstrates that the funds are deemed to be legitimately

earned and from which tax was payable to the collector of taxes.

2.13 It was deposed that this can be further seen by the authorisation given by the Respondent following requests made by the Applicant for funds to be transferred from the Applicant's account for payment of legal fees and salaries. That it begs the question why transfer funds if they are alleged to not have been legitimately earned. Exhibits marked "**CM8 (a-g)**" show correspondence exchanges between the Parties and ZANACO in relation to the transfers were produced.

2.14 The Deponent averred that **the Act** gives the Respondent power to direct that the Applicant's property not be disposed of or dealt with unless with the consent of the Director-General, that however it does not give the Respondent power to deal with the Applicant's property on its own volition as it did by issuing the instruction to ZANACO as indicted above which saw the Respondent dictating exchange rates to be used. That the Respondent was arbitrarily dealing with the Applicant's restricted funds.

2.15 Clever Mpoha averred that the Respondent's Restriction Notice goes against **the Act** and has also seen the Applicant suffer great financial loss as it is an operational account without the Applicant having been given sufficient details to enable it to defend itself in relation to the continued investigations.

- 2.16 The Deponent avowed that the Applicant suffered financial loss in terms of local deposit interest in the sum of USD 58,980.38, venture capital investments in the sum of USD 2,400,000.00, loss of alternative use of funds in the sum of USD 2,288,333.93, and operational inefficiency specifically with regards to the amount paid to the Zambia Revenue Authority which was not negotiated down resulting in the Applicant not being able to save USD 1,755.86.
- 2.17 That the Respondent's action has resulted in the loss of a total of USD 4,749,070.17 as shown by the Applicant's Business Claims Report exhibited as "**CM9**".
- 2.18 Clever Mpoha deposed that the Applicant was informed by ZANACO that the Respondent had renewed the restriction for a further six months. That this renewed Restriction Notice, like the first one, was in breach of the mandatory provisions of **the Act** and was never served on the Applicant by the Respondent.
- 2.19 The Deponent averred that a Restriction Notice may be renewed to facilitate the continuation of the investigations and not to commence investigations. That since the 18<sup>th</sup> August 2022 when the first Restriction Notice was placed on the Applicant's account number 5727652500219 at ZANACO, no investigations were carried out by the Respondent against the Applicant Company and no single officer of the Applicant Company has been summoned by the Respondent regarding the funds sitting to the Applicant's

credit at ZANACO and no Restriction Notice has ever been served on the Applicant.

2.20 It was the Deponents averment that there was impropriety in the issue of both Restriction Notices against the Applicant.

### **3. AFFIDAVIT EVIDENCE IN OPPOSITION**

3.1 The Respondent filed Affidavit in Opposition to the Originating Summons dated 20<sup>th</sup> June 2023 sworn by Milimo Ngandu, a Senior Investigations Officer in the employ of the Respondent.

3.2 The Deponent averred that on 18<sup>th</sup> August, 2022, he served the Restriction Notice exhibited as **"MN1"** on the Applicant's US Dollar account number 5727652500219 held with ZANACO being the Third-Party holding money on behalf of the Applicant who was a person under investigation. That the Restriction Notice takes effect upon service on the Third-Party holding the property on behalf of a person under investigations.

3.3 The Deponent averred that he has seen the letter dated 23<sup>rd</sup> August 2022 exhibited in the Applicant's Affidavit in Support as **"CM1"** which *inter alia* requested for a meeting with the Respondent to find ways in which the funds could be treated. That consequently, a meeting was proposed to be held on 29<sup>th</sup> August 2022. That during the said meeting, the Applicant's advocates were advised to provide lists of the activities in relation to the funds requested which list, exhibited by the

Applicant as “**CM2**”, would be subjected to vetting and cross referring by the Respondent.

- 3.4 That in a letter dated 14<sup>th</sup> September, 2022, exhibited as “**CM4**” in the Applicant’s Affidavit in Support, the Applicant refused to furnish specific details relating to its employees and other operational requirements but instead claimed constitutional privacy, trade secrets and confidentiality. It was deposed that providing such information to a law enforcement agency such as the Respondent is without prejudice to the right to privacy, trade secrets and confidentiality.
- 3.5 The Deponent deposed that despite being aware of the Restriction Notice the Applicant on 11<sup>th</sup> October 2022 instructed ZANACO to remit the sum of ZMW 2,980,045.89 to the Zambia Revenue Authority for income tax exhibited as “**MN2**” which includes the Applicant’s duly completed tax remittance form instructing ZANACO to pay the said sum to Zambia Revenue Authority from the Applicant’s restricted US Dollar account number 5727652500219 held with ZANACO.
- 3.6 That following Zambia Revenue Authority’s acknowledgment of the Applicant’s tax liability, the Respondent consented to ZANACO making the payment. That due to the Restriction Notice, ZANACO would not have acted on the Applicant’s request without the Respondent’s consent. It was avowed that the authorised amount for tax remittance was ZMW 211,063.14 or approximately USD 14,070.88 less than what

the Applicant had instructed ZANACO to pay resulting in a savings. The Zambia Revenue Authority Return Acknowledgment Receipt is exhibited as “**MN3**”.

- 3.7 It was deposed that the Respondent being aware of the Applicant being a going concern, allowed the Applicant to access funds from the restricted account to meet its operational and statutory obligations upon furnishing the Respondent with requested details of the obligations. That where any requests were denied, it was for the reason that the Applicant failed or neglected to give sufficient particulars of the obligations. That exhibit “**MN4(a)-(c)**” are copies of correspondence from the Respondent to ZANACO and then to the Applicant’s advocates Messrs. Corpus Legal Practitioners either allowing or denying the Applicant access to the funds from its restricted account. It was deposed that the Respondent’s consent for ZANACO to remit tax to Zambia Revenue Authority at the Applicant’s own instruction was not arbitrary.
- 3.8 It was averred that the basis of the Restriction Notice is disclosed in the Notice being that investigations into offences alleged or suspected to have been committed under **the Act** are being conducted and that the Applicant as a person under investigations enjoys the presumption of innocence. That the Respondent’s Director-General can consent to dealing with the restricted accounts but such consent does not clear the investigations upon which the Restriction Notice

was grounded. That a Restriction Notice is not concerned with the legitimacy or otherwise of the restricted property, but with investigations being conducted.

3.9 It was deposed that there was good cause for restricting the Applicant's account and that investigations being carried out by the Respondent extend beyond the Applicant's minority shareholder Mr. Clever Mpoha to the Applicant itself.

3.10 That ZANACO being the Third-Party holding the property on behalf of the Applicant was duly served with a fresh Third-Party Restriction Notice exhibited as "MN5" on 15<sup>th</sup> May 2023 following the expiration of the initial Third-Party Restriction Notice. That there is nothing wrong or improper with the initial and fresh Restriction Notices which have been duly served on the Bank. That the fact that no officer of the Applicant has been interviewed yet only goes to show that investigations have not concluded yet thus justifying a fresh Third-Party Restriction Notice to facilitate conclusion of investigations against the Applicant.

#### **4. APPLICANT'S SKELETON ARGUMENTS IN SUPPORT**

4.1 The Applicant filed Skeleton Arguments in Support of the Originating Summons on 6<sup>th</sup> July, 2023, and the pertinent issues are noted below.

4.2 The Applicant begun by quoting the provisions of **the Act** pursuant to which this action before this Court was commenced by way of Originating Summons and referred us

to the cases of **New Plast Industries Vs The Commissioner of Lands and The Attorney-General**<sup>(1)</sup> and **B. P. Zambia Plc Vs Zambia Competition Commission, Total Aviation and Export Limited and Total Zambia Limited**<sup>(2)</sup> which guided on the mode of commencement of any action.

- 4.3 The Applicant submitted that both Restriction Notices served on the Third-Party and not on the Applicant never took effect for none service on the person being investigated or to be investigated.
- 4.4 It was the Applicant's contention that **Section 61(2) of the Act** is couched in mandatory terms by the use of the word "shall". The Applicant referred us to the case of **Queen Vs The Judge of the City of London Court**<sup>(3)</sup> as well as the Supreme Court case of **Mutale Vs Attorney-General and Another**<sup>(4)</sup> and **The Attorney-General Vs Lewanika and Four Others**<sup>(5)</sup> and argued that there was a mandatory duty placed on the Respondent to serve the said Notices on the Applicant and failure to do so is fatal.
- 4.5 The Applicant referred us to **Section 61(4)(a) of the Act** and while noting that it too is couched in mandatory terms, submitted that none of the Notices were served on a person being investigated. The Applicant submitted that the effect of non-service of both Notices is fatal and cannot be cured by any subsequent action. In doing so, the Applicant referred to the case of **Kalandanya and Others Vs the Attorney-**

**General and Others** <sup>(6)</sup> at page J26, paragraph 4.11 where this Court held as follows:

*“In the present case, as stated already, it is not in dispute that the impugned Notices of Seizure were not served on the Appellants. This renders them illegal.”*

- 4.6 It was argued that even if the fresh Restriction Notice was valid, it is meant to conclude investigations which it has not. The Applicant stated that there were no investigations in the first place and therefore, there were no investigations to conclude.
- 4.7 The Applicant submitted that it may be argued that the Applicant was and is aware of the restrictions on its US Dollar account, but that argument would be a miscarriage of justice. It was argued that knowledge of the restriction was on account of the Applicant wishing to access its funds from the Third-Party, ZANACO, who reminded it of the restriction and that information from a Third-Party cannot entail service by the Director-General of the Respondent on a person being investigated and was not in compliance with **Section 61(2)** of **the Act** which is mandatory. That the same goes for the various correspondence between the Applicant and the Respondent. That the Director-General’s failure to serve a person being investigated renders the whole process illegal.
- 4.8 It was the Applicant’s prayer that both the expired Restriction Notice and the fresh Restriction Notice restricting access to the Applicant’s US Dollar account number 5727652500219

held by ZANACO are null and void *ab initio*, be discharged forthwith and the Applicant be allowed immediate access to its bank account in issue by way of withdrawing and depositing money therein. The Applicant further prayed for costs.

## **5. RESPONDENT'S SKELETON ARGUMENTS IN OPPOSITION**

- 5.1 The Respondent filed List of Authorities and Skeleton Arguments in Opposition to the Applicant's Originating Summons on 20<sup>th</sup> July, 2023.
- 5.2 The Respondent begun by giving a background to the matter similar to our Introduction above and proceeded to quote **Section 61** of **the Act** and submitted that contrary to the Applicant's contention a Restriction Notice actually takes effect upon service on the Third-Party being in the case in *casu*, ZANACO who was served with both the initial and fresh Third-Party Restriction Notices.
- 5.3 That although **Section 61(2)** provides that a Third-Party Restriction Notice is also served on the person under investigations, the said provision does not state that the said notice only takes effect when served on the person under investigations as stated in **Section 60** of **the Act** which applies to the issuance of first party Restriction Notices. The Respondent submitted that **Section 61(4)(a)** is among the provisions that guide on when a Third-Party Restriction Notice takes effect.

- 5.4 It was the Respondent's submission that having regard to **Section 61(1), (5), and (6)**, the person referred to under **Section 61(4)(a)** is the Third-Party and the provision enacts that a Third-Party Restriction Notice shall have effect from the time of service upon "the person", singular, and does not say upon the "persons". The Respondent submitted that they were fortified by **Section 61(5)** which creates an offence for non-compliance with a Third-Party restriction notice on the part of the Third-Party who is served under **Section 61(1)** without further reference to the service on the person under investigations under **sub-section (2)**.
- 5.5 They argued that stated another way, the Third-Party's obligation to comply with a Third-Party Restriction Notice under risk of committing an offence arises the moment the Third-Party is served without further recourse to the service of the said notice on the person under investigation. The Respondent submitted the ruling of the High Court in the case of **Godfrey Shamanena Vs Anti-Corruption Commission and The Zambia National Commercial Bank Plc.** <sup>(7)</sup> to buttress their argument.
- 5.6 The Respondent submitted that the fact that no officer of the Applicant has been interviewed only goes to show that investigations have not concluded yet, thus justifying a fresh Third-Party Restriction Notice to facilitate conclusion of investigations against the Applicant as shown by exhibits **"MN1"** and **"MN5"** in the Affidavit in Opposition.

- 5.7 With regards to the case of **Kalandanya and Others Vs the Attorney-General and Others** <sup>(6)</sup> the Respondent submitted that this case was correctly decided on its own facts as it related to a seizure notice issued under the **Prohibition and Prevention of Money Laundering Act**. It was argued that the said piece of legislation has no comparable provision to **Section 61 of the Act** on a Third-Party Restriction Notice taking effect upon service to the Third-Party as was the case in the present matter.
- 5.8 In conclusion, the Respondent prayed that this Court finds in favour of the Respondent and uphold the Third-Party Restriction Notice as it is legally effective and was legally issued and served on the intended Third-Party, ZANACO pursuant to **Section 61 of the Act**, being a bank holding funds on behalf of the Applicant herein.

## **6. HEARING**

- 6.1 The Hearing of the Matter was on the 10<sup>th</sup> October 2023 with Counsel for both parties present.
- 6.2 At the start of the proceedings, Mr. Katolo, Counsel for the Applicant, was granted leave in accordance with **Order XVIII** of the **High Court Rules** to correct a typographical error with regards to the Applicant's account number which the Respondent had also noted in its submissions. We wish to state that the error has been corrected accordingly in this Judgment.

- 6.3 In augmenting their submission orally, Mr. Katolo submitted that this matter hinges on the correct interpretation of **Section 61 (1) and (4) of the Act**. He submitted that the Respondent does not deny not having served the Applicant with the Restriction Notice but confirms having duly served the same on the Third-Party, being ZANACO. The contention by the Applicant is that it was not served with the Restriction Notices as required by the law and therefore, the said Notice has never taken effect, is a nullity and illegal. Counsel submitted that the issue for this Court to determine is what the legal effect of not serving a Restriction Notice on the party being investigated.
- 6.4 Counsel submitted that **Section 61(1) of the Act** identifies two parties, that is the Third-Party and the person being investigated and is a mandatory provision. It was submitted that service on a Third-Party is under **section 61(1)** and service on a person being investigated is covered under **Section 61(2) of the Act**. Counsel argued that under **subsection (4)(a)**, the Notice only takes effect when it is served upon the person being investigated
- 6.5 Counsel referred the Court to the case of **Kalandanya and Others Vs the Attorney-General and Others** <sup>(6)</sup> and submitted that failure to effect service on the person being investigated renders the Notices illegal and invalid. Counsel urged this Court to be persuaded by the holding in **Kalandanya and Others Vs the Attorney-General and**

**Others** <sup>(6)</sup> above which though premised on the provisions of the **Prohibition and Prevention of Money Laundering Act**, is good law in relation to **Section 61(4)** of **the Act**.

- 6.6 Counsel argued that the continued restriction of the Applicant's bank account is not only illegal but oppressive and beseeched this Court to allow the application and quash the Restriction Notice issued and allow the Applicant free access to its account. Counsel further prayed for costs.
- 6.7 In response, Counsel for the Respondent, Ms. S. Mutamina, submitted that the Applicant has placed reliance on **Section 61** of **the Act** and that the reliance has been placed in part and not in whole. Counsel submitted that when read in whole, the said provision allows for the Respondent to issue Third-Party Restriction Notices, which it did on the Applicant's bank account held at ZANACO who holds the property being restricted. That a reading of **section 61(5)** penalises the Third-Party if the restricted property is dealt with in any way without consent of the Director-General of the Respondent and reiterated that the said Third-Party Restriction Notice was duly served on the Third-Party who holds the property.
- 6.8 With regards to **Kalandanya and Others Vs the Attorney-General and Others** <sup>(6)</sup> as determined by this Court, Counsel argued that this case is distinguishable from the matter at hand as the issues in that case dealt purely with notices of

seizure under the **Prohibition and Prevention of Money Laundering Act** whilst the case in *casu* is under **the Act**.

6.9 Ms. Mutamina referred this Court to the case of **Ronald Kaoma Chitotela Vs The Anti-Corruption Commission** <sup>(8)</sup>

where Judge Bowa in the High Court held as follows:

*“I would agree that the essence of an investigation would be jeopardised if a subject had prior notice of an inquiry. I would further agree that the requirement to give a person notice of the investigation sets in and is met when the notice is issued. The wording of the Restriction Notice makes this glaringly clear.*

*The Restriction Notice serves as an investigative tool at the disposal of the Respondent to preserve the property and prevent its disposal subject to the conclusion of an investigation and or subsequent prosecution.”*

6.10 In the case above, the High Court determined the question, is there a mandatory requirement for personal service and held as follows:

*“The failure to serve the Applicant personally, which the Respondent did not seem to contest, did not in any event render the Restriction Notice invalid or liable to be set aside. Although there was no averment expressing difficulty in tracking the Applicant on the part of the Respondent, I see no prejudice occasioned to the Applicant who confirms being made aware of the Notice through his lawyers. It is on account of such knowledge that he has been able to mount a challenge of the Restriction Notice as he is perfectly entitled to.”*

- 6.11 Counsel submitted that Counsel for the Applicant had argued that **Section 61(4)(a)** of **the Act** refers to the person under investigation. It was her argument that the said provision refers to “the person” and does not categorically or specifically state that it is a person under investigation. Further that when read as a whole, **section 61** refers to both a Third-Party, ZANACO, and a person under investigations, the Applicant in the case in *casu*.
- 6.12 Counsel submitted that the Applicant is seeking for payment in the sum of USD 4,749,070.17 being the total loss suffered on account of the restriction being placed by the Respondent and is also asking for the lifting of the Restriction Notice. It was Counsel’s contention that the Restriction Notices issued on the Applicant’s bank account were rightly issued as investigative tools pursuant to the provisions of **the Act** and that on that premise, the Applicant is not entitled to any of the claims made. Counsel further submitted that no loss has been occasioned on the part of the Applicant as the transactions indicated in both the Affidavit in Support and in Opposition were at the instruction of the Applicant to the Bank and with the consent of the Director-General of the Anti-Corruption Commission in accordance with the provisions of **Section 61** of **the Act**.
- 6.13 Counsel’s prayer was that this Court dismisses the application with costs to the Respondent.

- 6.14 In reply, Counsel for the Applicant, Mr. Katupisha, begun with the **Ronald Kaoma Chitotela Vs The Anti-Corruption Commission** <sup>(8)</sup> case cited by the Respondents above. He submitted that in that case, there was actual service of the person being investigated through its lawyers and in the case in *casu*, there was not and has never been service both of the initial and fresh Restriction Notices on either the Applicant or its Advocates.
- 6.15 Counsel argued that the reading of **Section 61(2)** requires service but the Respondent saw no need to serve the person being investigated. Counsel argued the Respondent's position with regards to service is contrary to the provisions of the law which is mandatory and the Respondent cannot void this.
- 6.16 Counsel referred to the Respondent's submission in the Skeleton Arguments in Opposition with regards to their interpretation of **Section 61** and submitted that they do not agree with this as **Section 61(2)** has already identified the parties as the Third-Party and the person. That in **subsection (4)**, the Third-Party is not under investigations. It was Counsel's submission that the person being investigated was never served therefore, both Restriction Notices did not take effect for none service on the Applicant and consequently a nullity and illegal. Counsel argued that therefore, the **Ronald Kaoma Chitotela Vs The Anti-Corruption Commission** <sup>(8)</sup> case is distinguishable because

in that case there was service albeit on the applicant's lawyers.

6.17 Mr. Katolo submitted that the **Kalandanya and Others Vs the Attorney-General and Others** <sup>(6)</sup> case as submitted by the Respondent is not distinguishable and argued that it is on all fours with the case in *casu*. Counsel submitted that in the **Kalandanya Case** the Court was interpreting the **Narcotic Drugs and Psychotropic Substances Act** and that the provision is exactly or a mirror image of **Section 61 of the Act**. Counsel submitted that in both cases the issue is none service of notices and proceeded to quote the holding at page J26 as shown at 4.5 above.

6.18 Counsel argued that in this matter, as was the case in the **Kalandanya Case**, the impugned Notices were never served on the Applicant as required by law, therefore it should follow that the want of service must, as a matter of fact, render the Restriction Notices illegal and invalid. Counsel submitted that it is the duty of this Court to give effect to the intention of the legislature as expressed in the black letter of the law. That the Applicant herein is not crying about personal service, but about service in accordance with the law.

6.19 In attacking the Respondent's misapprehension of the law when they submitted that the Restriction Notice issued in this matter was a Third-Party Restriction Notice, Counsel argued that there is no such thing as a Third-Party Restriction Notice under **Section 61** or indeed in the entire

**Act.** That there is only a Restriction Notice which can be issued to a Third-Party but served on both the Third-Party and the person being investigated.

6.20 Counsel concluded his reply by praying that the Applicant's application be allowed with costs to the Applicant.

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

7.1 We are grateful for the submissions from both Parties as well as the spirited augmentations made orally during the Hearing. The Applicant has put forth six reliefs being sought and we shall consider the first, second and third reliefs together and then rest in *seriatim*.

7.2 We will begin our consideration of the arguments presented by the Parties by quoting the impugned **Section 61** of the **Act** which covers restriction on disposal of property by Third-Party as follows:

*“(1) The Commission may, where it has reasonable grounds to believe that a Third-Party is holding any property, including money in a bank account for, or on behalf of, or to the order of a person who is under investigation, by notice, in writing, under the hand of the Director-General, serve a notice on the Third-Party directing that the Third-Party shall not dispose of, or otherwise deal with, any property specified in the notice.*

*(2) A notice issued under subsection (1) shall be served on the Third-Party to whom it is directed and on the person being investigated.*

*(3) The Commission may, in issuing a notice under this section impose such conditions as it may determine.*

*(4) A notice issued under subsection (1) shall—*

*(a) in respect of an investigation within the jurisdiction, have effect from the time of service*

*upon the person and shall continue in force for a period of nine months or until cancelled by the Director-General, whichever is earlier; and*

*(b) in respect of an investigation outside the jurisdiction, have effect from the time of service*

*upon the person and shall continue in force for a period of twelve months or until cancelled by the Director-General, whichever is earlier:*

*Provided that the Director-General may issue a fresh notice upon the expiry of the previous one for a further final term of six months to facilitate the conclusion of an investigation.*

*(5) A Third-Party on whom a notice is served under subsection (1) who disposes of, or deals with, the property specified in the notice without the consent of the Director-General commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years.*

*(6) A Third-Party on whom a notice is served under this section shall not dispose of, or otherwise deal with, the property specified in the notice except in accordance with the terms of the notice.*

*(7) Subsections (5), (6) and (7) of section sixty apply to this section.”*

7.3 For purposes of clarity and to distinguish from **Section 60** which refers to first party Restriction Notices, we shall adopt

the phrase “Third-Party Restriction Notice” as used by the Respondent in relation to Notices issued under **Section 61** of **the Act** to a Third-Party holding property on behalf of or to the order of a person under investigations, even though, as rightly pointed out by the Applicants, no such phrase exists in **the Act**.

7.4 Notwithstanding the Applicant’s assertions that there were no investigations against the Applicant relating to the funds held in the account at ZANACO which could give rise to the Notice, the Respondent has submitted that in fact, the Applicant is under some form of investigation which did give rise to the Third-Party Restriction Notice on the Applicant’s account. Despite the Respondent not providing details of the said investigations, **Section 11** of the **Act** permits the Director-General, on behalf of the Commission to conduct an inquiry or investigation into alleged or suspected offences under **the Act**. The Supreme Court in the case of **Anti-Corruption Commission Vs Barnet Development Corporation Ltd** <sup>(9)</sup> observed that the investigation and prosecution of the person for an offence under the Act need not exist at the same time for a restriction notice to issue. Investigation and/or prosecution can result in the issuance of a restriction notice.

7.5 We can reasonably infer that as a result of the said investigations on the Applicant, Third-Party Restriction Notices were written or issued to ZANACO being the holder

of the Applicants US Dollar project account as per **Section 61(1) of the Act**. The Notice instructed the Third-Party, ZANACO, not to dispose of or otherwise deal with the monies held in the Applicant's account number 5727652500219. We therefore, do not find that the placing of the Restriction Notice on the account in and of itself is unreasonable and illegal as alleged by the Applicant as there were and are investigations being conducted into alleged offences under **the Act** or other relevant statutes. We are fortified by the Supreme Court's decision in the case of **The Anti-Corruption Commission Vs Ngoni Mwelwa Chibesakunda** <sup>(10)</sup> at J10 as follows:

*“We are satisfied that when issuing a Restriction Notice, the Defendant's Director General is not required to specify the offence being investigated. All that the Director General is required to state is that the offence being investigated is under part IV of the Act. The Act specifically deals with corruption and corruption related offences and a person who is served with a Restriction Notice under section 24 (1) of the Act should have an idea that he is being investigated for an offence relating to corruption.”*

7.6 The questions that remain with regard to the first, second and third reliefs sought by the Applicant are when does a Third-Party Restriction Notice take effect? And does the Respondent's lack or want of service of the Third-Party Restriction Notices issued on the Applicant's account mean

they are ineffective rendering them irregular null and void *ab initio*?

- 7.7 Having determined that the placing of the Third-Party Restriction Notices on the Applicant's US Dollar project account held at ZANANO was within the Anti-Corruption Commission Director-General's rights and mandate as conferred by **Sections 11** and **61(1)** of **the Act** as the Applicant is under investigations into alleged offences under **the Act**, what follows thereafter is clearly stipulated by **the Act**.
- 7.8 **Section 61(4)(a)** states that a notice issued under **Section 61(1)** in respect of investigations within the jurisdiction has effect from the time of service upon the person and shall continue to be in force for a period of nine (9) months or until cancelled by the Director-General. **Section 61(4)(b)** allows the Director-General to issue fresh Third-Party notice upon the expiry of the first one which will be in force for a period of six (6) months.
- 7.9 In the case in *casu*, the Respondent did issue and serve two Third-Party Restriction Notices on the Third-Party, being ZANACO. As submitted by both Parties, the initial Third-Party Restriction Order issued on 18<sup>th</sup> August, 2022, for nine (9) months expired and a fresh Third-Party Restriction Notice was issued on 12<sup>th</sup> May, 2023 and received by ZANACO on the 15<sup>th</sup> May, 2023.

- 7.10 Careful reading of **Section 61(4)(a)** of **the Act**, shows that a notice issued under **Section 61(1)** has effect from the time of service upon the person. The Applicant has argued that “the person” means both the person being investigated, the Applicant, and the Third-Party, ZANACO, while the Respondent has argued that when **Section 61** is read holistically, the phrase “the person” excludes the Applicant.
- 7.11 **Section 61(1)** as stated in the margin contains provisions that restrict a Third-Party’s ability to dispose of property belonging to a person under investigation. **Section 61(4)** begins by referring to **sub-section (1)**, a provision directed to the Third-Party who is the holder of the property belonging to person under investigation, and states that investigations will only take effect from the time of service, meaning when the Third-Party, the Bank in *casu*, has been made aware of the investigations and its inability to dispose of or deal with the property belonging to the person under investigation, being the Applicant herein.
- 7.12 The Restriction Notice from the Director-General dated 12<sup>th</sup> May 2023 exhibited as “**MN5**” and addressed to and served on ZANACO is very instructive on this. It states in part as follows:

**“RESTRICTION NOTICE ISSUED UNDER SECTION 61(1) OF THE ANTI-CORRUPTION ACT NO. 3 OF 2012.**

***The Commission is conducting investigations into offences alleged or suspected to have been committed under Part III of the Anti-Corruption Act No. 3 of 2012.***

*In exercise of the powers conferred on me by section 61(1) of the Anti-Corruption Act No. 3 of 2012, I hereby direct that you shall not dispose of, or otherwise deal with monies held in account number Savenda Systems Ltd, Account Number 5727652500129 without my consent.”*

- 7.13 The letter goes on to provide information contained in **Sections 61(1), (4) and (5) of the Act** and quotes the same as above.
- 7.14 It is our considered view that the phrase “the person” contained in the provisions of **Section 61(4)(a)** only speaks to the Third-Party holding any property, including money in a bank account for, or on behalf of, or to the order of a person who is under investigation. Having regard to **Section 61(1), (5), and (6)**, the person referred to under section **61(4)(a)** is the Third-Party and the provision enacts that a Third-Party Restriction Notice shall have effect from the time of service upon “the person”, singular, and does not say upon the “persons”. Therefore, it is only when the Third-Party Restriction Notice was issued and served on the Bank that the Notice had effect and the effect was to stop the Bank from disposing or otherwise dealing with monies held in the Applicant’s US Dollar project account in order to further facilitate the Respondent’s investigations.
- 7.15 Be that as it may, the mandatory provisions of **Section 61(2) of the Act** as quoted above cannot be ignored. **Section 61(2)**

in its literal, plain and ordinary meaning simply requires that a Third-Party Restriction Notice issued under **Section 61(1)** must not only be served on the Third-Party but also on the person being investigated. This does not seem illogical to us as any person who has an interest in and or ownership of a property being investigated by the Anti-Corruption Commission and to which has been issued with a Restriction Notice, under both **Sections 60** or **61** of **the Act**, has a right to know of this and such knowledge will not in any way stop or hinder the investigations nor affect the Third-Party's obligations to comply with the dictates of a Third-Party Restriction Notice.

7.16 For the Director-General of the Anti-Corruption Commission to decide to issue Restriction Notices on either a first party, the person who is the subject of an investigation or a Third-Party holding the property of a person under investigations, it should be because prior initial investigations have established a possibility of an offence alleged or suspected to have been committed under **the Act** or against whom a prosecution for an offence has been instituted.

7.17 **Section 61(7)** is equally instructive of the need to adhere to **Section 61(2)** of **the Act** and serve the Notice issued not only on the Third-Party but also on the person being investigated to allow them due process of the law. **Section 61(7)** states that **subsections (5), (6) and (7)** of **Section 60** apply to this

section, being **section 61**. The pertinent **Subsections** of **section 60** of the Act read as follows:

*“(5) A person aggrieved with the directive of the Director-General issued under subsection (1) may apply to the High Court for an order to reverse or vary the directive.*

*(6) An application made under subsection (5) shall give notice to the Director-General of the day appointed for the hearing of the application as a judge of the High Court may order.”*

7.18 A person aggrieved is a first party under **Section 60** or a person under investigations under **Section 61** of the Act. Therefore, notification through service of the Restriction Notice on the person being investigated is a must.

7.19 It is our considered view that this was the intention of the drafters. The effect of **Section 61(2)** does not result in an absurdity or an obnoxious result nor is the section ambiguous. We are guided by the case of **The Attorney General and Another Vs. Lewanika and Four Others** <sup>(5)</sup> wherein the Supreme Court stated as follows:

*“If the words of the statute are precise and unambiguous, then no more can be necessary than to expand on those words in their ordinary and natural sense. Whenever a strict interpretation of a statute gives rise to an absurdity and unjust situation, the judges can and should use their good sense to remedy it by reading words in it, if necessary, so as to do what Parliament would have done had they had the situation in mind.”*

7.20 Further in the Supreme Court case of **Matilda Mutale Vs Attorney-General and Another** <sup>(4)</sup> where the word “shall” is used in a provision of the law, the Court stated as follows:

*“In the context of Section 96(3), the view we hold is that the words used therein do not carry any technical meaning to require further elaboration as to the true intention of the legislature. As far as we can ascertain, the words in Section 96(3) are clear, plain and unambiguous. Given their literal interpretation, they clearly demonstrate that it is mandatory for the petitioner to sign the petition personally.”*

7.21 We see no reason to meddle with the words used in **Section 61(2) of the Act** as they are precise and unambiguous and there is no justifiable reason for us to remedy the provision as it does not give rise to an absurdity and an unjust situation. It is as Parliament intended.

7.22 Having found that service should have been effected on the person being investigated, the question that remains for us to consider is the consequences of the Respondent’s failure to adhere to a clear direction set in mandatory terms.

7.23 The consequences of non-adherence to mandatory provisions of the law was pronounced in the Supreme Court case of **Access Bank (Zambia) Group Vs Group Five/ZCON Business Park Joint Venture** <sup>(11)</sup> in which Malila JS (as he was then) in delivering the judgment of the Court stated as follows:

*“In NFC Mining Plc Vs Techpro Zambia Limited <sup>(12)</sup> we warned that failure to comply with rules by litigant could*

*be fatal to their case, we dismissed that appeal in that case on account of the appellant's failure to comply with the rules. We stated among other things that Rules of Court are intended to assist in the proper and orderly administration of justice and as such must be strictly followed".*

7.24 The consequence of none adherence to mandatory provisions of the law is well established. We are further buttressed by our decision in the **Kalandanya Case** at page J25 as follows:

*"4.9. Parties have expressed opposing views on the one part, the Appellants contend that the Respondent had an obligation to serve the Notices of Seizure on the Appellants while on the other part, the Respondent asserts that they are not under an obligation to serve. As highlighted already, the Notices of Seizure were issued pursuant to Section 15 of the Prohibition and Prevention of Money Laundering Act. The provision does not state that the Notices of Seizure must be served on the party affected by the seizure, in this case, the Appellants. However, a reading of the provision alongside other provisions of the same Act, disclose that the Respondent was under an obligation to serve the Notices of Seizure n the Appellants. Thus, for example, Section 18 (1) (b) of the Act, envisages representations from persons who are lawfully entitled to the seized property. Logically, such a person can only make a representation if s/he has been notified about the seizure. This view is supported by the warning that is expressed on the prescribed Form of the Notice of Seizure. The warning affirms the requirement of the Respondent to serve the Notice of Seizure on the party affected by the Seizure as this is the only mechanism by which s/he is notified of his right to make*

*representations with a view to reclaim the seized property, should s/he desire to do so.*

*For avoidance of doubt, the Notice states as follows:*

*"You are warned that these goods may be declared to be forfeited to the State under Section 17 of the Prohibition and Prevention of Money Laundering Act No. 4 of 2001".*

*4.10. The view expressed above is further supported by the settled principle that a person cannot be condemned unheard. Accepting the Respondent's submission entails condemning the Appellants without giving them an opportunity to be heard. In any event, ownership of property being a fundamental right guaranteed by Article 16(1) of the Constitution, cannot be taken away from the Appellants without giving them an opportunity to be heard.*

*4.11. In the present case, as stated already, it is not in dispute that the impugned Notices of Seizure were not served on the Appellants. This renders them illegal and invalid."*

7.25 It is therefore our considered view that the Respondent's failure to serve the Third-Party Restriction Notice on the Applicant, being the person under investigation, as mandated by **Section 61(2) of the Act** renders them irregular, null and void *ab initio* for want of service and we order that the Restriction Notice on the Applicant's USD Dollar project account number 5727652500219 held with ZANACO be lifted with immediate effect.

7.26 We have taken into consideration the cases cited by the Respondent to buttress their submissions. The case of **Ronald Kaoma Chitotela Vs The Anti-Corruption**

**Commission** <sup>(8)</sup> is distinguishable from the case in *casu* as it considers service of a first party notice under **Section 60(2) of the Act** and states that the notice may either be served by delivering it to the person to whom it is addressed or may, where the Director-General is satisfied that that person cannot be found, or is not in the Republic, be served on or brought to the knowledge of that person in such other manner as the Director-General may direct. High Court Judge Bowa, in our view, correctly determined that no prejudice was occasioned to the Applicant who confirmed being made aware of the Notice through his Lawyers who were served with the Notice.

7.27 We note the High Court case of **Godfrey Shamanena Vs Anti-Corruption Commission and The Zambia National Commercial Bank Plc** <sup>(7)</sup>, cited by the Respondent and as illustrated above, we hold a different view and further state that the same is not binding on us.

7.28 With regards to the fourth relief the Applicant is seeking an Order that the Applicant is entitled to a payment of the sum of USD 4,749,070.17 (four million, seven hundred and forty-nine thousand and seventy United States Dollars and seventeen cents) the same being the total loss suffered on account of the restriction placed by the Respondent.

7.29 The Respondent has argued that they were aware of the Applicant being a going concern and allowed the Applicant to access funds from the restricted account to meet its

operational and statutory obligations upon furnishing the Respondent with requested details of the obligations. That where any requests were denied, it was for the reason that the Applicant failed or neglected to give sufficient particulars of the obligations.

7.30 It is not in dispute that the Applicant's US Dollar account number 5727652500219 held with ZANACO which is the subject of the Third-Party Restriction Notice is an operational account. It is not in dispute that through its Lawyers, the Applicant and the Respondent did agree to find ways in which the restricted funds could be treated without affecting the operations of the Applicant. It is further not in dispute that it was agreed that the Applicant would furnish the Respondent with lists of activities and specific details relating to the Applicants employees and other operational requirements in relation to the funds requested which list would be subjected to vetting and cross referencing by the Respondent. All of the above was done in line with **Section 61 of the Act** and as stated in the Restriction Notices served on the Third-Party.

7.31 By a letter dated 14<sup>th</sup> September 2022 exhibited as "**CM4**", the Applicants, through their Lawyers, refused to furnish specific details relating to its employees and other operational requirements citing constitutional privacy, trade secrets, security and confidentiality. This was despite the fact that providing such information to a law enforcement agency

such as the Respondent is without prejudice to the right to privacy, trade secrets and confidentiality.

- 7.32 Perusal of the Record and the submissions by the Parties shows that where the Applicant furnished the Director-General with a list of activities and specific details relating to the list of payments, the Director-General would authorise ZANACO to honour the requests (“**CM5**”, “**CM8(b)**” “**MN4a**” “**MN4b**” and “**MN4c**”). However, where specific details were found lacking by the Director-General, the same were not authorised (“**MN4b**”).
- 7.33 The Applicant had alleged that the Anti-Corruption Commission paid ZRA without consulting it, but the Records show that the Applicant initiated the transaction and the payment request made by ZANACO was authorised by the Respondent’s Director-General as per exhibits “**MN2**”, “**MN4a**”, and “**MN4c**”.
- 7.34 It is our considered view that despite the Third-Party Restriction Notice, the Director-General at the instance of the Applicant, and being aware that the Applicant is a going concern, was able to give consent to ZANACO to honour some of the Applicant’s operational costs and statutory obligations such as the income tax payment made to the Zambia Revenue Authority as long as they met the condition that specific details regarding each activity were furnished to allow for vetting and cross referencing. This is in line with **Section 61(3) of the Act**. When the Applicant failed to meet

this condition, the Director-General rightly refused to consent to the requests.

7.35 We have also noted that some of the activities and obligations that the Applicant has complained were not met as a result of the Restriction Notice resulting in huge financial loss as shown in exhibit “**CM9**” are unsubstantiated, were not in place and none existent at the time of the Notice taking effect and are speculative in nature and aspirational at best.

7.36 We are guided by the Supreme Court’s decision in the case of **Savenda Management Services Vs. Stanbic Bank Zambia Limited** <sup>(13)</sup> wherein it was stated as follows:

*“The need for particularisation of such claims is in order to alert a defendant of the case against him and aid the court to properly assess and determine the loss by giving it a monetary value. We have in the past held ...that it is for any party claiming a special loss to prove that loss and to do so with evidence which makes it possible for the court to determine the value of that loss with a fair amount of certainty. The case of **Mhango Vs. Ngulube and Others** is a case in point.”*

7.37 In the case of **Phillip Mhango Vs. Dorothy Ngulube and Others** <sup>(14)</sup> cited in the above case, the Supreme Court held as follows:

*“Any party claiming a special loss must prove that loss and do so with evidence which makes it possible for the court to determine the value of that loss with fair amount of certainty.”*

7.38 Based on our findings and authorities cited above, with regards to the reliefs sought by the Applicant above, we do

not find that the Applicant is entitled to a payment of the sum of USD 4,749,070.17 (four million, seven hundred and forty-nine thousand and seventy United States Dollars and seventeen Cents) being the total alleged loss suffered on account of the restriction placed by the Respondent as they have failed to prove the loss claimed.

## 8. CONCLUSION

8.1 In sum and for the avoidance of doubt, the following are our findings:

- 1) The placing of the Third-Party Restriction Notice on the Applicant's US Dollar project account number 5727652500219 held at ZANACO in and of itself is reasonable and legal;
- 2) It is only when the Third-Party Restriction Notice issued under **section 61(1) of the Act** was served on the Third-Party, being ZANANCO, that the said Notice had effect;
- 3) **Section 61(2) of the Act** is a mandatory provision of the law and therefore, the Third-Party Restriction Notice should not only have been served on the Third-Party, but also on the person being investigated, that is the Applicant;
- 4) The Respondent's failure to serve the Third-Party Restriction Notice on the Applicant renders it irregular, null and void *ab initio* for want of service.

- 5) We order that the Third-Party Restriction Notice on the Applicant's US Dollar project account number 5727652500219 held at ZANACO be lifted with immediate effect.
- 6) We find that the Applicant is not entitled to a payment of the sum of USD 4,749,070.17 (four million, seven hundred and forty-nine thousand and seventy United States Dollars and seventeen Cents).
- 7) Parties to bear their own costs. .

8.2 Leave to appeal is granted.

**SIGNED, SEALED AND DELIVERED AT LUSAKA**

THIS 12<sup>th</sup> DAY OF Feb 2023



.....  
**A MALATA-ONONUJU  
HIGH COURT JUDGE**



.....  
**I. M. MABBOLOBOLO  
HIGH COURT JUDGE**



.....  
**S. V. SILOKA  
HIGH COURT JUDGE**