

IN THE HIGH COURT OF ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES DIVISION REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2024/HPEF/022

IN THE MATTER OF: SECTION 18 OF THE PROHIBITION AND
PREVENTION OF MONEY LAUNDERING
ACT NUMBER 14 OF 2001

IN THE MATTER OF: ORDER XXX RULES 15 AND 17 OF THE
HIGH COURT RULES

BETWEEN:

THE ATTORNEY GENERAL
AND



APPLICANT

IN RE PROPERTY:

CASH IN THE FOLLOWING INDO ZAMBIA
BANKS: USD16,993.77 IN ACCOUNT
NUMBER 8904006; ZMW40,304.41 IN
ACCOUNT NUMBER 9128018

BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, P. K.
YANGAILO AND S. V. SILOKA ON THIS 25TH DAY OF
SEPTEMBER, 2024.

For the Applicant: Mr. Sumbukeni – Attorney General’s
Chambers

For the Interested Party: No Appearance

J U D G M E N T

S. V. Siloka, J. delivered the Judgment of the Court.

CASES REFERRED TO:

1. *Khalid Mohamed Vs The Attorney General (1982) ZR 49 (SC) at 51.*

LEGISLATION REFERRED TO:

1. *The Prohibition and Prevention of Money Laundering Act Number 14 of 2011 of the Laws of Zambia;*
2. *The High Court Rules, Chapter 27 of the Laws of Zambia; and*
3. *The State Proceedings Act Chapter 71 of the Laws of Zambia.*

1.0 INTRODUCTION

1.1 This Matter was commenced by way of Originating Notice of Motion for an Application for Forfeiture Order pursuant to **Section 18 of the Prohibition and Prevention of Money Laundering Act Number 14 of 2011 of the Laws of Zambia** as read together with **Order XXX Rules 15 and 17 of the High Court Rules Chapter 27 of the Laws of Zambia**. The Application was accompanied by an Affidavit in Support and Skeleton Arguments dated the 4th of July, 2024.

2.0 AFFIDAVIT EVIDENCE IN SUPPORT

- 2.1 The Affidavit in Support was deposed to by **Hussein Khan**, employed as a Chief Investigations Officer by Drug Enforcement Agency (DEC).
- 2.2 The Deponent deposed that on 6th of May, 2004, DEC seized money suspected of being proceeds of crime and held in two

separate Bank Accounts domiciled at Indo Zambia Bank as per exhibit “**HK1**”.

2.3 The Deponent further deposed that following the Seizure and considering that no claim for the seized property was made by any person, DEC caused adverts to be placed in one national newspaper and the Government Gazette on the 9th of February, 2024, to the effect that the seized property would vest in the State if it remained unclaimed within three months from the date of the adverts as per exhibit “**HK2**”.

2.4 That after the adverts were published, DEC has not received any claim within the stipulated period of three months.

2.5 That he has been advised by his Advocates on record and verily believes the same to be true, that this is a proper Matter in which the High Court for Judicature of Zambia can grant a Forfeiture Order with regard to the seized property herein.

3.0 SKELETON ARGUMENTS IN SUPPORT

3.1 It was Counsel’s submissions that **Section 15** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001 (The Act)** empowers an Officer of the Anti-Money Laundering Investigations Unit of the Drug Enforcement Commission to seize property which the Officer has reasonable grounds to believe is

derived or acquired from money laundering. Counsel relied on **Section 15** of the **Act**. This Section states:

“15. An authorized officer shall seize property which that officer has reasonable grounds to believe that the property is derived or acquired from money laundering”.

3.2 It was Counsel’s further submission that **Section 18 (1)** of the **Act** provides how property that has not been subject of any Court proceedings should be disposed of. **Section 18 (1)** provides as follows:

“1. Where any property has been seized under this Act and –
a. no prosecution for any offence under written law is instituted with regard to the property;
b. no claim in writing is made by any person; and
c. no proceedings were commenced within six months from the date of seizure, the Commissioner shall apply to Court upon the expiration of the period of six months for an order of forfeiture of that property”.

3.3 It was also Counsel’s submission that in terms of **Section 18 (2)** of the **Act**, the Commissioner is required to give Notice of the intended forfeiture of the seized property if it is not claimed within 3 months of the publication. **Section 18 (2)** provides:

“18 (2) The Court shall not make an order of forfeiture under subsection (1) unless –

- a. The Commissioner has given notice by publication in the Gazette and in one National Newspaper to the effect that property which has been seized under this Act shall be liable to vest in the State if it is not claimed within three months; and*
- b. Three months after the giving of the notice under paragraph (a) the property remains unclaimed”.*

3.4 It was further submitted that the Commissioner (now called the Director General) has satisfied the requirements under **Section 18 (2)** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2011** of the **Laws of Zambia**.

3.5 It was further submitted that these proceedings were brought by the Director General in terms of **Section 12 (1)** of the **State Proceedings Act Cap 71** of the **Laws of Zambia** because the office of the Director General is not a corporation sole capable of commencing an action in its own name. **Section 12 (1)** of the **State Proceedings Act** states that:

“Subject to the provisions of any other written law, civil proceedings by or against the State shall be instituted by or against the Attorney General”.

4.0 ISSUES FOR DETERMINATION

- 4.1 *i. Whether the Application is properly before this Court.*
- ii. Whether in spite of being unopposed, the State has proved its case.*

iii. Whether the Court can grant the Application prayed for by the State.

4.2 *i. Whether the Application is properly before Court.*

We note that this Matter has been brought before Court pursuant to **Section 18** of the **Prohibition and Prevention of the Money Laundering Act Number 14 of 2001** of the **Laws of Zambia** as read together with **Order XXX Rule 15** and **17** of the **High Court Rule Chapter 27** of the **Laws of Zambia**.

4.3 A close analysis of the said Sections, reveals that this action is properly before us and that this Court has jurisdiction to hear this Application.

4.4 We are also satisfied that the Matter was properly commenced by the Applicant pursuant to **Section 12 (1)** of the **State Proceedings Act** because the Director General is not a corporation sole.

4.5 *ii. Whether in spite of the Application being unopposed, the State has proved its case.*

We note that this Application was unopposed. However, though the Application was unopposed, the State must, on a balance of probabilities, prove their case as stated by the Supreme Court in the case of *Khalid Mohamed Vs The Attorney General*⁽¹⁾ that:

“A Plaintiff cannot automatically succeed whenever a defence has failed, he must prove his case”.

- 4.6 From the evidence on Record, we are satisfied that reasonable suspicion was ignited in the Applicant's mind that the monies in the two Accounts were proceeds of crime because after Seizure, no claimant came on board to register his or her interest.
- 4.7 The failure by any Interested Party to register their interest in the property, indeed raises reasonable suspicion that the money in the two Accounts is a proceed of crime. This is further amplified by the lack of response to the advert placed in a national newspaper and Government Gazette as prescribed by **Section 18** of the **Prohibition and Prevention of Money Laundering Act**.
- 4.8 *iii. Whether the Court can grant the Application prayed by the State.*


For this Application to be granted, the Applicants must not only meet the requirements of reasonable suspicion but must also meet the requirements of **Section 18 (1)** and **(2)** of the **Prohibition and Prevention of Money Laundering** cited above.

- 4.9 Looking at the Application before us in the light of the two sections, we are satisfied that the Applicant has met the requirements of the law and that the Applicant has satisfied us that the funds in the two Accounts were reasonably suspected to be proceeds of crime.

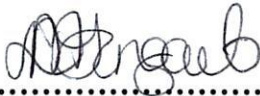
5.0 CONCLUSION

5.1 Having satisfied ourselves that the Applicant has met the requirements of the law as regards forfeiture, the Application by the Applicant is granted and the funds in the two Accounts are hereby forfeited to the State.

DELIVERED AT LUSAKA THIS 25TH DAY OF SEPTEMBER, 2024.



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S. M. WANJELANI
HIGH COURT JUDGE



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P. K. YANGAILO
HIGH COURT JUDGE



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S. V. SILOKA
HIGH COURT JUDGE