

**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES COURT DIVISION
HOLDEN AT LUSAKA**

2024/HPEF/001

(Constitutional Jurisdiction)



IN THE MATTER OF:

- a) **ARTICLE 1 (3) AND 1 (2) OF THE CONSTITUTION OF ZAMBIA**
- b) **ARTICLE 11, 16, (1) and (2) t (1), 17 AND 18 OF THE CONTITUTION OF ZAMBIA**
- c) **SECTIONS 52, 53, AND 58 OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 2021**
- d) **SECTION 28 OF THE PROHIBITION AND PREVENTION OF MONEY LAUNDERING ACT NO.14 OF 2001 OF THE LAWS OF ZAMBIA**
- e) **SECTION 118 OF THE CRIMINAL PROCEDURE CODE ACT CHAPTER 88 VOLUME 7 OF THE LAWS OF ZAMBIA**
- f) **NOTICE OF SEIZURE OF PROPERTY KNOWN AS PLOT NO. 19 MAIN STREET, IBEX HILL, LUSAKA (ALL PROPERTIES ON THE SAID PLOT)**
- g) **THE PROTECTION OF FUNDAMENTAL RIGHTS RULES 1969**

BETWEEN:

SEDRICK KAPASA KASANDA

PETITIONER

AND

THE ATTORNEY GENERAL

RESPONDENT

BEFORE THE HONOURABLE JUSTICE A. M. ONONUJU, I. M. MABBOLOBOLO & S. V. SILOKA IN OPEN COURT ON THE 20TH DAY OF JANUARY, 2025.

For the Petitioner: Mr. N. Botha, Messrs Makebi Zulu Advocates
Ms. M. Phiri, Messrs Makebi Zulu Advocates
Ms. Z. Chirembo, Messrs Katongo and
Company.
Ms. P. Nachimba, Messrs Katongo and
Company.

For the Respondent: Mr. K. Chipulu, Senior State Advocate-
Attorney General's Chambers
Mr. C. Watopa, Senior State Advocate-
Attorney General's Chambers.
Mr. Chandwe Bikoko, State Advocate-
Attorney General's Chambers
M. Akufuna Isiteketo, State Advocate –
Attorney General's Chambers.

JUDGMENT

MABBOLOBOLO I. M. J, DELIVERED THE JUDGMENT OF THE COURT.

A. CASES REFERRED TO:

1. *Bwalya Chitalu Kalandanya & 3 Others v The Attorney General* 2022/HPEF/10
2. *Patel v The Attorney General* (1968) ZR 99 H.C.
3. *Stanley Kingaibe and Charles Chookole v Attorney General* 2009/HL/86 (unreported)
4. *Major Isaac Masonga v The People* SCZ No. 24 of 2009
5. *Christine Mutundika and 7 Others v The People* (1995) ZR
6. *Daniel Chizoka Mbandangoma v Attorney General* (1979) ZR. 58
7. *Wiltshire v Barret* (1966) 1QB 312
8. *The People v Austin Liato* (SCZ Appeal No. 291/2014)
9. *Ghani v Jones* (1969) 3 ALLER 1700
10. *Kachasu v The Attorney General* (19670 ZR 145 (HC)
11. *Chitotela v Anti-Corruption Commission and Others* 2022/HPEF/02 (Unreported)
12. *Communication Authority v Vodacom Zambia Limited* SCZ Judgment No. 21 of 2009
13. *C & S Investments Limited and Others v The Attorney General* (2004) ZR 216
14. *Shell and B.P Zambia Limited v Conidaris* (1975) ZR 174 (SC)
15. *Morgan v Sim* (1857) UKPC 33
16. *J. Z Car Hire v Chala Scirocco Enterprise Limited* (SCZ Judgment No. 26 of 2002)

A. LEGISLATION REFERRED TO:

1. *The Constitution of Zambia Chapter 1 of the Laws of Zambia*
2. *The Prevention and Prohibition of Money Laundering Act No. 14 of 2001 of the Laws of Zambia*
3. *The Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021 of the Laws of Zambia*
4. *The Criminal Procedure Code Chapter 88 of the Laws of Zambia*
5. *The State Proceedings Act Chapter 71 of the Laws of Zambia*

C. OTHER WORKS REFERRED TO:

1. *Mc. Gregor on Damages, 15th Edition, Sweet & Maxwell*

1.0. INTRODUCTION

1.1. This is a Judgment in a case where the Petitioner claims violation of his rights as guaranteed under certain Articles of the **Constitution of Zambia**. The Petition which was initially filed on 3rd January, 2024, was amended with Leave of Court and is accompanied by an Amended Affidavit Verifying Facts both filed into Court on 20th April, 2024.

2.0. THE PETITIONER'S AMENDED PETITION

2.1. The Petitioner stated that he is a Zambian citizen and business man who resides at Plot No.19 Main Street, Ibex Hill, Lusaka, in the Lusaka District of the Lusaka Province of the Republic of Zambia, whilst the Respondent is the Government's Chief Legal Advisor and representative of Government in all legal matters and has been sued in accordance with **Section 12** of the **State Proceedings Act, Chapter 71** of the **Laws of Zambia**.

2.2. The Petitioner averred that in the nocturnal hours of 17th August 2023, a collaborative Unit comprising Officers from Zambia Police, Drug Enforcement Commission and the Office

of the President intruded and/or unlawfully entered into the Petitioner's residence and executed a raid without the issuance of a duly executed Warrant before entering.

2.3. He stated that during their presence on the premises, the aforementioned team, armed with rifles, proceeded to fill in a document purportedly resembling a Search Warrant and subsequently, they initiated a search on the Petitioner's Property and that all this transpired while the children in the house were asleep. That despite the search persisting until sunrise, it is note worthy that the team did not seize or take any moveable property from the Petitioner's residence save that upon concluding the search, the Petitioner herein was promptly commanded to accompany the team of Officers to Drug Enforcement Commission for questioning. That the Petitioner was taken back to his residence for another search during which the Petitioner's Property known as Plot No. 19 Main Street (Subdivision No. 4 of Subdivision A of Lot 1751/M) and all the properties thereon were seized under the Notice of Seizure No. D.15424.

2.4. It was stated that the seizure of the said Property was purportedly done under the authority of **Section 15** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** citing reasonable grounds to believe that the Properties are liable to seizure. That when the Petitioner inquired from the Respondent's agent by the name of Kabwe Ng'andwe, he was informed that the Property was seized solely for investigations purposes.

2.5. The Petitioner contends that the Respondent can only seize landed property for agricultural purposes as per **Article 16**

(1) and (2) t (i) of the **Constitution of Zambia**. Further that the seizing of the Property solely for investigations purposes as in this case is illegal, null and void, as it contravenes **Article 16(1) and (2) and (ii)** of the **Constitution**.

- 2.6. According to the Petitioner, on or about 6th March, 2024, the Respondent's Agent, the Drug Enforcement Commission executed, a Notice of Seizure No. D3904 relating to Property No. Subdivision No. 4 of Subdivision A of Lot No. 1751/M (1751/m/a/4/2) situate in the Lusaka Province of the Republic of Zambia. That the Notice of Seizure was issued by Lillian Chiyesu and the reasons for seizure are explained in the said Notice, seizing the said Property that is the subject of these Proceedings and which is also known as Plot No. 19, Main Street, Ibex Hill, Lusaka.
- 2.7. The Petitioner stated that he believes that the actions taken by the Drug Enforcement Commission who are agents of the Respondent to issue another Notice of Seizure on the same Property that had a Notice of Seizure issued on it, is a breach of the Constitutional guarantee afforded to him in **Article 16** of the **Constitution of Zambia** (as amended) that the Petitioner seeks to be corrected by this Court. Further that the Petitioner believes that the acts of the Respondent were carried out despite its full awareness of these ongoing Proceedings but deliberately chose to disregard the Court process, demonstrating a clear intent to defy the fact that the Property in question is subject to Legal Proceedings.
- 2.8. He vehemently asserts that the Property in question was legitimately acquired and the seizure lacks basis. The Petitioner firmly asserts that the manner in which the

Property was seized by the team deprives the Petitioner of his right to Property, a fundamental right protected under the **Constitution** and firmly asserts the belief that seizing the Property solely based on suspicion without concrete evidence is unjust and lacks a legal foundation for such severe action.

- 2.9. The Petitioner contended that by virtue of what is stated above, his rights have been violated. First the entry of Officers upon the Petitioner's premises without a duly issued Warrant from a Magistrate in blatant disregard of the provisions of **Section 118** of the **Criminal Procedure Code** which is the law that prescribes the rules about inquiring into crimes and stipulates that a Warrant ought to be issued by a Magistrate and does not have exceptions to this.
- 2.10. Secondly the Petitioner's rights to privacy as protected under **Article 17** of the **Constitution** were violated without justification. That the entry by the Officers was without a duly issued Warrant from a Court of competent jurisdiction in blatant disregard of the provisions of **Section 23** of the **Prohibition and Prevention of Money Laundering Act** which is the law pursuant to which the purported Notices of Seizure were issued.
- 2.11. Thirdly, the Petitioner's rights to property as protected under **Article 16** of the **Constitution** were violated without lawful justification when the property was seized for investigation purpose, an act which is null and void. That the Seizure of the Petitioner's Properties without a duly issued Warrant from a Magistrate violated his right to protection from deprivation of property as protected under **Article 16** of the **Constitution of Zambia**.

2.12. The Petitioner contends that his right to a fair trial as protected under **Article 18** of the **Constitution** is likely to be violated as the investigations are being done in blatant disregard of the provisions of the law relating to investigations of crime more specifically the provisions of **Section 118** of the **Criminal Procedure Code Act** which stipulates that a Warrant ought to be issued by a Magistrate and does not have exceptions to this requirement and **Section 23** of the **Prohibition and Prevention of Money Laundering Act No.14 of 2001** which stipulate that a Warrant ought to be issued by a Court of competent jurisdiction being a Magistrate Court or High Court and do not have exceptions to this requirement, which may affect his ability to formulate a defence with his documents and property under Seizure. Further that it takes away from the equality of arms between the Prosecution and the defence and lastly it jeopardises his presumption of innocence.

2.13. The Petitioner stated that he was apprehended without being told why and that the Officers insisted that he travels in the DEC car instead of moving with his Advocates which jeopardized his right to a fair trial and impugns his right to be presumed innocent. Further that the seizure of the Petitioner's Properties without ever being charged nor tried for any offence related to the **Prohibition and Prevention of Money Laundering Act** or the **Narcotic Drugs and Psychotropic Substances Act** both pre and post seizure jeopardise his right to a fair trial and impugn his right to be presumed innocent. The Petitioner therefore seeks the following remedies:

- 2.13.1. *A Declaration that the Respondent's agents in Seizing the Property No Subdivision No.4 of Subdivision A of Lot No. 1751/M [1751/M/A/4/2] which is also known as Plot No.19, Main Street, Ibex Hill Lusaka on diverse dates solely for investigations purposes as in this case is illegal, null and void, as it contravenes **Article 16 (1) and (2)t (i) (ii)** of the **Constitution**.*
- 2.13.2. *A Declaration that the Officers from the Drug Enforcement Commission have no authority to issue Seizure Warrants in the manner they did and against the provisions of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia** and the **Prohibition and Prevention of Money Laundering Act No,14 of 2001** of the **Laws of Zambia**.*
- 2.13.3. *A Declaration that the search and seizure of the Petitioner's properties by the Drug Enforcement Commission Officers was ultra vires, void ab initio and illegal.*
- 2.13.4. *An Order that the Seizure of the Petitioner's Properties without the Petitioner ever being charged or tried for any offence related to the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** or the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** both pre and post the Seizure violates the Petitioner's rights to a fair trial, jeopardises and impugns his right to be presumed innocent.*

- 2.13.5. *A Declaration that the Drug Enforcement Commission return all the properties that were seized from the Petitioner herein.*
- 2.13.6. *Damages for anguish, impacting the well being of the occupants, particularly minors and loss of use of the Properties seized.*
- 2.13.7. *Damages for trespass to property.*
- 2.14. The Affidavit verifying the Petition sworn by the Petitioner essentially mirrored the contents of the Petition save to add that the Petitioner exhibited copies of Notices of Seizure by the Respondent and adverted to belief evidence.
- 2.15. The Petitioner averred that following the initial questioning, he was once again taken back to his residence for another search, during which the investigative team seized his property known as Plot No. 19, Main Street, Ibex Hill Lusaka and all these Properties situated thereon were seized forthwith under the Notice of Seizure No. D15424 as shown in exhibit “**SKK1**”.
- 2.16. According to the Petitioner, he is aware that on or about 6th March, 2024, the Respondent’s agent, the Drug Enforcement Commission, executed a Notice of Seizure No. D 3904, relating to Property No, 4 of Subdivision A of Lot No. 1751/M (1751/M/A/4/2) situate in Lusaka Province of the Republic of Zambia. That further the later Notice of Seizure was issued by Lillian Chiyesu and the reasons for Seizure are explained in the said Notice, seizing the Property that is the subject of these Proceedings and is also

known as Plot No. 19, Main Street, Ibex Hill as shown in the Copy marked “**SKK2**”.

2.17. The Petitioner deposed that he had been advised by his appointed Advocates and believes to be true that:

2.17.1. *the Respondent can only legally seize landed Property for agricultural purposes as per **Article 16(1) and (2) t (1) of the Constitution of Zambia***

2.17.2. *it is illegal, null and void to seize his properties for purposes of investigations.*

2.17.3. *the actions undertaken by the Drug Enforcement Commission who are agents of the Respondent to issue another Notice of Seizure on the same Property that had a Notice of Seizure issued on it is a breach of the Constitutional guarantee afforded to the Petitioner in **Article 16** of the Constitution of Zambia (as amended) that the Petitioner wants to be corrected by this Court.*

2.17.4. *the acts of the Respondent’s agents were carried out despite its full awareness of these ongoing proceedings but deliberately chose to disregard the Court process, demonstrating a clear intent to defy the fact that the Property in question is subject to legal proceedings.*

2.17.5. *the Respondent’s failure to respect the law in discharging its duty now resulted in the Petitioner being turned into a ‘sitting duck’ without constitutional right to protection of law.*

2.17.6. *seizing of the Property solely based on suspicion, without concrete evidence, is unjust and lacks a legal foundation for such severe action.*

2.17.7. *in view of the above the rights of the Petitioner as tabulated in the Petition were violated and as such, he is entitled to the reliefs so claimed.*

2.17.8. *with the continued state of affairs, the Petitioner is at the whim and caprice of the Respondent's Agents to violate the Constitutional guarantee provided for in the Constitution is unacceptable in a Constitutional democracy like Zambia.*

3.0. THE RESPONDENT'S ANSWER TO THE PETITION

3.1. The Respondent's Amended Answer to the Amended Petition was filed on 3rd May, 2024. It was stated that the Respondent denies the contents of the Petitioner's Petition to the extent that the named collaborative Unit executed a raid on the Petitioner's residence without a duly executed Warrant before entering the Petitioner's premises.

3.2. That the Respondent would at trial aver that the search was done pursuant to duly executed Search Warrants issued under **Section 52 of the Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021**. Further that the Officers from the Drug Enforcement Commission had reasonable grounds to suspect that in/on the Petitioner's premises, there was concealed or deposited property liable to seizure, hence moving in under the authority of the said Search Warrant. Additionally, the Respondent stated that the search was in fact conducted in the presence of the Petitioner's Advocates

on Record who also ensured that all the Petitioner's rights were observed during the search.

- 3.3. The Respondent added that it is standard procedure for Officers to be armed during a search for protection as it is not anticipated what kind of retaliation they might receive from suspects or owners of property. That, however, the Officers did not enter the Petitioner's house with firearms as the Officers who were armed remained outside the house.
- 3.4. The Respondent averred that the investigations revealed that there was an element of fraudulent dealing in minerals, and Tax Evasion on the part of the Petitioner and his Company, prompting the Officers to believe that the Property was derived or acquired from proceeds of crime as fraudulent dealing in minerals without a licence, and Tax Evasion are both predicate offences of Money Laundering.
- 3.5. The Respondent denied the assertion by the Petitioner that it can only seize landed Property or that seizing the Property solely for investigations is illegal, null and void as it contravenes **Article 16 (1) and (2) t (i) and (ii)**. The Respondent averred that **Article 16 (2) (t)** of the **Constitution** in fact allows for Seizure of Property for purposes of investigations.
- 3.6. Regarding the assertion by the Petitioner that there was duplicity in issuing two Seizure Notices in respect of Subdivision No. 4 of Subdivision A of Lot No. 1751/M [1751/M/A/4/1], the Respondent averred that the issue had already been addressed by the Court in its Ruling dated 26th April, 2024, when dismissing the Petitioner's Application for Leave to Commence Contempt Proceedings.

- 3.7. The Respondent contended that the Petitioner can not make the assertion that the Property in question was legitimately acquired before he is cleared in the investigations or criminal proceedings that may ensue.
- 3.8 It was averred that the action by the Drug Enforcement Commission to seize the Property in question for purposes of investigations into suspected Tax Evasion and Money Laundering does not amount to compulsory acquisition as the Property may later be returned to the Petitioner subject to the outcome of the investigations. That consequently, the Respondent denies the alleged breaches of the **Constitution** and further denies that the Petitioner is entitled to any of the reliefs sought.
- 3.9. The Respondent averred that the relief of a declaration that the Drug Enforcement Commission returns all the Properties that were seized herein is incompetent as facts in support of the Petition herein are limited to Property namely Plot No.19, Main Street, Ibex Hill, Lusaka and the assets found thereon.
- 3.10. In an Amended Affidavit in Opposition to the Amended Affidavit verifying facts sworn by Kabwe Ng'andwe and Nchindika Chola who are employed as Senior Investigations Officer and Investigations Officer respectively by the Drug Enforcement Commission, it was averred that contrary to the assertions by the Petitioner, the Officers did not execute a raid without the issuance of a duly executed Warrant before entering the Petitioner's premises. That the search was done in the presence of the Petitioner's Advocates who also ensured that all the Petitioner's rights were observed during the search.

- 3.11. The Deponents added that the search was conducted pursuant to a duly executed Search Warrant issued under the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** as at the time of the search, they had reasonable grounds to suspect that there was deposited or concealed in or on the Petitioner's premises, property liable for seizure. A copy of the Search Warrant was exhibited as "**KN1**".
- 3.12. It was deposed that the search began at the Petitioner's Office where he refused to allow the Law Enforcement Officers access to the premises until the Petitioner's Advocates were engaged by the Drug Enforcement Commission. That when the Petitioner's Advocates came, he was taken to the Drug Enforcement Commission Office where he was interviewed and, thereafter taken to his Office, where the Officers conducted a Search in the presence of the Petitioner and his Advocates. A copy of the Search Warrant is exhibited as "**KN2**".
- 3.13. The Deponents averred that contrary to the assertion by the Petitioner, their preliminary investigations revealed that there was an element of fraudulent dealing in minerals and Tax Evasion on the part of the Petitioner and his Company. That it was at that point that the Deponents had reasonable grounds to believe that the Petitioner's subject Property might have been derived or acquired from proceeds of crime as fraudulent dealing in minerals and Tax Evasion are both predicate offences of Money Laundering. A true copy of the Garnishee Order by the Zambia Revenue Authority affecting one of the Petitioner's companies was exhibited as "**KN3**". Further that related to this, the subject property was seized

pursuant to a validly executed Seizure Notice, a copy of which is marked “KN4” under the **Prohibition and Prevention of Money Laundering Act**.

3.14. The Deponents averred that they had been advised by the Respondent’s Advocates and believe to be true that:

3.14.1. *it is a notorious fact that the Petitioner was currently in Court under Cause HP/328/2024 on charges relating to Espionage and Fraudulent Dealing in Minerals.*

3.14.2. *searching the Petitioner’s residence pursuant to a Search Warrant issued under the **Narcotic Drugs and Psychotropic Substances Act** and seizing the Subject Property under the **Prohibition and Prevention of Money Laundering Act** does not invalidate the seizure.*

3.14.3. *the Drug Enforcement Commission has the power to seize the Petitioner’s Properties as it did, pending investigations into suspected illegal Money Laundering and other related offences.*

3.14.4. *the seizure of Petitioner’s Properties herein pending investigations is lawful and valid.*

3.15. The Deponents deposed that contrary to the Petitioner’s assertion that two Notices were issued on the same Property, it was established that the Property disclosed by the Petitioner, Plot No. 19 Main Street, Ibex Hill was in fact Lot No. 1751/M/A situate in Lusaka which in fact came to light when DEC attempted to place a Restriction Order on the Property following the Seizure. That the restriction Order was

rejected on account that Plot No. 19, Main Street, Ibex Hill does not exist in the Ministry of Lands Register. Further that the reason a new Seizure Notice (**D3904**) was issued was to capture the correct registration details of the Property and to secure it from being disposed off by the Petitioner and which issue was already addressed by the Court in its Ruling dated 26th April, 2024.

4.0. THE PETITIONER'S REPLY TO THE RESPONDENT'S AMENDED ANSWER AND AFFIDAVIT IN OPPOSITION VERIFYING FACTS

- 4.1. The Petitioner in his Reply denied the Amended Answer by the Respondent and averred that at trial, he would assert that a Search Warrant must be issued before a Search can commence at a specified premise. That, the Respondent's agent disregarded the law governing the searching of a suspect's dwelling house and instead they conducted a raid and search of the Petitioner's premises without a properly executed Search Warrant. Further that, the purported Search Warrants were executed whilst on the premises.
- 4.2. The Petitioner stated that at trial, he would assert that the presence of his Advocates during the Search at his premises does not negate the fact that when conducting a Search, it is imperative to adhere strictly to due process as outlined in the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** of the **Laws of Zambia**.
- 4.3. It is the Petitioner's assertion that contrary to the Respondent's position regarding armed Officers, both the Officers who entered the house and those who remained outside were armed.

- 4.4. According to the Petitioner, he denies the assertion by the Respondent on fraudulent dealing in minerals and Tax Evasion by him and his company and would assert that they hold a valid trading licence and are Tax compliant with Zambia Revenue Authority adding that the Respondent would be required to provide strict proof of any contrary claims.
- 4.5. The Petitioner reiterated that his Property was acquired through legitimate means and not illicitly and that he is a reputable businessman with income that is untainted. That his possessions were lawfully acquired and it is his prerogative to maintain this stance until the veil of suspicion is lifted through due process, honouring the fundamental rights bestowed upon him by the **Constitution**. Further that seizure can only occur subsequent to investigations, not for the mere purposes of conducting investigations. The rider is that seizing legitimately acquired property under the guise of investigations represents a severe infringement of the Petitioner's rights and undermines the principles of justice and due process.
- 4.6. It was stated that when the Respondent seizes property without concrete evidence or lawful justification, it not only unjustly burdens the innocent, but also sets a dangerous precedent for arbitrary Government overreach as protecting citizens' rights entails upholding the presumption of innocence and ensuring that individuals such as the Petitioner are not unduly punished or deprived of their property without fair and transparent legal procedures.
- 4.7. By way of conclusion, the Petitioner asserts that he is entitled to all the substantive reliefs as contained in the Petition, and

the Respondent can not deny the rights of citizens but must protect them instead.

- 4.8. The Petitioner's Affidavit in Reply to Affidavit in Opposition to the Amended Affidavit Verifying Facts was merely a rehash of what is contained in the Reply. To avoid monotony and for good order, the content shall not be repeated here.

5.0. THE HEARING

- 5.1. At the commencement of the hearing of the Petition held on 17th July, 2024, the Petitioner, placed reliance for his Evidence in Chief on his Witness Statement filed into Court on 23rd May, 2024.
- 5.2. His evidence was that he is the legal owner and sole registered proprietor of Plot No. 19, Main Street, Ibex Hill, also known as Lot No. 1751/M (1751/M/A/4/2) as shown by the true copy of the Certificate of Title at pages 15 to 22 of his Bundle of documents.
- 5.3. He testified that on the night of 17th August, 2023, a group of Police Officers from the Zambia Police, Drug Enforcement Commission and the Office of the President went to his Office and asked that the Petitioner accompanies them to the Drug Enforcement Commission offices where he gave a statement after being asked to. That one of the employees of DEC, named Mr Chisuta, said that the Petitioner should go with some Officers to ensure that everything at the Petitioner's Office was safe.
- 5.4. According to the Petitioner, upon arrival at his Office in Kalundu, the Officers who had already entered his premises filled in what appeared to be a Warrant and proceeded to

conduct a Search which began around 02:00AM and ended around 04:00AM. That the Petitioner was then asked to go to his private residence, where his wife and himself had made a home and raised their family. That armed with rifles, they claimed to have a Search Warrant and proceeded to search the Petitioner's Property while his children were asleep from about 05:00AM to 06:00 AM and that despite the search, they did not seize anything but asked him to accompany them to the Drug Enforcement Commission for questioning.

5.5. He stated that on the 17th of August, 2023, at about 11:00AM, they returned to his residence in Ibex Hill and conducted a thorough search and he was informed that the search was commanded by the Director General of the Drug Enforcement Commission. That after the Search, they seized his Property and all the items therein at Plot No. 19, Main Street Ibex Hill, also known as Lot No. 1751/M [1751/M/A/4/2], Lusaka under Seizure No. D15424.

5.6. The Petitioner averred that he objected to the said search because it was not done in accordance with the law and in a professional manner and that he indicated his objection as evidenced by the Seizure Report on Page 24. Further that when he questioned about the seizure, he was informed by an Officer from DEC, named Kabwe Ng'andwe, that the Property was being seized for purposes of investigations which he believes violates his rights to own property as evidenced by the Seizure Warrant on Page 25 of his Bundle of Documents.

5.7. It was stated that on 6th March, 2024, the Drug Enforcement Commission issued another Notice of Seizure numbered

D3904 as contained at Page 26 of his Bundle further seizing his Property under the pretext that it was necessary for their investigations.

- 5.8. He asserted that his Property was acquired legally and the seizure is unjustified as it violates his fundamental right to Property. That the said Property was not constructed from proceeds of crime nor was it built overnight but represents years of hard work and legitimate investment. Further that, seizing it is merely an attempt to deprive him of his Property he owns without basis.
- 5.9. In cross examination, the Petitioner stated that when his house was being searched, he was not shown the Search Warrant. When referred to Page 23 of the Petitioner's Bundle of Documents, the Petitioner told Court that the document was a DEC Search and Seizure Warrant. He confirmed that it was signed by the Director General.
- 5.10. The Petitioner stated in response to a question that he was aware that when DEC and Police Officers are conducting a search, they can arrest any person believed to be in possession of any property illegally obtained or indeed if a crime has been committed.
- 5.11. Regarding the question that it was necessary for the Police or DEC Officers to carry fire arms when they are carrying out duties as above, the Petitioner's response was that it is not up to him to decide whether they should carry fire arms or not.
- 5.12. The Petitioner confirmed that he had stated in his testimony that the search was not done in accordance with the law but

conceded that he was not a legal expert and that to state that the Search was not in accordance with the law was not within his place.

- 5.13. He stated that he was aware that DEC Officers who went to his residence can seize property for purposes of investigations. He confirmed that after the Property was seized, he was informed that the seizure was solely for purposes of investigations. Further that he was aware that DEC can release back the Property to him if investigations are concluded in his favour.
- 5.14. When asked why he had come to Court when he was aware of the purpose of the seizure, the Petitioner's response was that it was his residence and he was not given an indication of how long the investigations would take.
- 5.15. On whether he was aware that he could lose his Property to the State if after investigation he was found wanting, the Petitioner responded that he was not aware. When referred to Page 25 of the Petitioner's Bundle of Documents and asked to publish what was there, he stated that from what was indicated, he can lose the Property, but in reality, he could not lose his Property.
- 5.16. When asked whether he was aware that in fact the State can grab a property such as his house provided, he was compensated, the Petitioner's response was that he was not aware.
- 5.17. The Petitioner confirmed that in his testimony, he had stated that the seizure violated his rights. He stated that he was not aware that the right to his Property is not in absolute terms.

- 5.18. The Petitioner conceded that he was currently undergoing Criminal charges relating to Minerals and Espionage.
- 5.19. There were no questions in Re- Examination and that marked the end of the Petitioner's case.
- 5.20. The Respondent's 1st Witness Statement was by Nchindika Chola, aged 31 years of Lilayi, Lusaka and an Investigations Officer (**RW1**) who placed reliance on her Witness Statement filed into Court on 14th May, 2024.
- 5.21. Her testimony is that on 17th August, 2023, whilst on duty, information was received to the effect that a male known as Sedric Kasanda (the Petitioner) was involved in illegal activities. That based on the information, instructions were given that the business premises and home of the Petitioner be searched in accordance with **Sections 52 and 53** of the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021**.
- 5.22. **RW1** testified that the Director General then issued a Search and Seizure Warrant and she served the same on the Petitioner in the presence of his Lawyers at Quayshaun International Zambia Limited situated at Plot No. 15, Kamba Road, Kalundu Area. That the said Search and Seizure Warrant is at Page 3-4 of the Respondent's Bundle of Documents.
- 5.23. According to **RW1**, the search was extended to the Petitioner's residence at Plot No. 19, Main Street, Ibex Hill, Lusaka (also known as Subdivision 4 of Subdivision a of Lot 1751/M situate in Lusaka).

- 5.24. She testified that after the search was concluded, she asked the Petitioner if he had any complaints in the manner the search was conducted, and he said he did not have any. That the response was then authenticated by signature of the Petitioner in the presence of his lawyers.
- 5.25. **RW1**'s further testimony was that after the search, the Officers, the Petitioner and his Lawyer returned to DEC Lusaka Province Offices and whilst there, information was received concerning the Petitioner's possible involvement in Tax Evasion, fraudulent mineral trading and various other possible crimes necessitating that a search once again be conducted at his home. That at 12:20 hours, she was issued with a Search and Seizure Warrant which she served on the Petitioner for Plot No. 19, Main Street, Ibex Hill, Lusaka, in the presence of his lawyers. The said Search and Seizure Warrant is at Page 1-2 of the Respondent's Bundle of Documents.
- 5.26. According to **RW1**, following the search, several items were seized from the home of the Petitioner including a Motor Vehicle and the house itself on suspicion that they could be proceeds of crime. That she asked the Petitioner in the presence of his lawyer if he had any complaints on how the search had been conducted and that he stated that the search had not been done in a professional manner.
- 5.27. In Cross Examination and in response to a question to tell Court which Paragraph of her Witness Statement states that the search and Seizure Warrant was signed by the Director General, **RW1** stated that Paragraph 4 mentions that. She added further that as of August, 2023, the Director General

was Mr. Nason Banda. When referred to Page 1 of the Respondent's Bundle, she replied that she could not see the name of Nason Banda.

- 5.28. When referred to Page 6 of the Respondent's Bundle with 2 documents and particularly the one ending with D15370, **RW1** stated that it was addressed to FNB Compliance Department and did not state the name of who the Account belongs to. In respect of the second document D15434, **RW1** said it was dated 17th August, 2023. It was her position that she did not take this document to the Ministry of Lands.
- 5.29. **RW1** Confirmed that on the morning of 17th August, 2023, she visited the Petitioner's house with her workmate, Isaac Daka, and that they did not seize anything.
- 5.30. When asked whether she was aware that on 6th March, 2024, the DEC through Lillian Chiyesu had placed another Notice, her response was that she was not aware as she did not want to speculate. She also said that she was not aware that a Seizure Notice is by law required to be valid for 6 months.
- 5.31. She confirmed that she neither recorded an ordinary Statement nor a Warn and Caution Statement from the Petitioner concerning any charges of Money Laundering or with regards to possession of property or proceeds of crime.
- 5.32. **RW1** agreed that if arithmetics is used, a simple calculation from 17th August, 2023, to February, 2024, the Seizure Notice issued by DEC would have expired according to the Petitioner's Advocates.
- 5.33. Referred to Page 26 of the Petitioner's Bundle and asked what document it is, **RW1** stated that it is Notice of Seizure

from DEC dated 6th March, 2024 relating to L/1751/M/A, Lusaka, Ibex Hill. When asked whether she had conducted a search at Ministry of Lands, she stated that she personally had not.

5.34. **RW1** confirmed that House No. 19 Ibex Hill where she had gone to, was a landed property. She agreed that in her Witness Statement she had not stated that the house was seized for agricultural purposes. She agreed that because she is a person with a legal background, she knows that the **Constitution** is the highest form of law. She however, stated that she was not aware that **Article 16** of the **Constitution** states that a landed property can only be seized for agricultural purposes.

5.35. She confirmed that what she knows is that there was a Seizure and Search Warrant executed by herself on 17th August, 2023. She denied having knowledge concerning the second Seizure Notice of 6th March, 2024.

5.36. When referred to Page 5 of the Respondent's Bundle of Documents, she stated that it was a document from ZRA regarding Tax arrears. When asked who are the parties in the matter before Court, she stated that it was **Sedrick K. Kasanda v Attorney General** and that AFME Metal Exchange is not a party to this matter. **RW1** confirmed that she had never recorded a Statement from AFME Metal Exchange.

5.37. She responded affirmatively when asked whether she went to the Petitioner's house around 04:00hours on 17th August, 2023. She confirmed that at that point she never seized anything. When asked what vehicles she found, her response

was that her memory may be faulty but she remembers a Range Rover and a Rolls Royce.

5.38. **RW1** confirmed going to the Petitioner's house for the second time and that both searches were done as a Task Force of Officers from DEC, Police, Immigration, Office of the President and National Anti- Terrorism Commission.

5.39. She confirmed that on this occasion, a Mercedes Benz was seized. Further that there were no narcotics found. That she did not establish whose vehicle the Mercedes Benz was for as she was not in charge of the investigations. She confirmed that she was aware of other items seized with the Mercedes Benz such as electronics, phones, ipads and personal computer. When asked whether she was aware that the other items were given back to the Petitioner's family, her response was that she was.

5.40. When asked whether she had established when the subject house was built, she stated that it was not part of her investigation. Further that the person in charge of the investigation was the Case Officer on Record by the name of Lillian Chiyesu. She confirmed that House No.19 was seized for purposes of investigations.

5.41. In Re-Examination, **RW1** clarified that the Search and Seizure Warrant was issued by the Director General.

5.42. The Respondent's second witness who gave her evidence at the continued trial held on 29th July, 2024 is 43 year old Kabwe Ng'andwe, a Senior Investigations Officer (**RW2**). Her brief testimony as contained in her Witness Statement was that on the material day giving rise to this action, she was

part of the Joint Investigations Team that conducted a search at the Petitioner's residence namely Plot 19, Ibex Hill, Lusaka.

5.43. According to **RW2** when they arrived at the Petitioner's residence a Search Warrant was served on the Petitioner by Ms. Chindika Chola, an Investigations Officer working under the Anti- Drug Operations Department (ADOD) of the Drug Enforcement Commission.

5.44. It was **RW2's** testimony that towards the end of the search, among the items she seized was a house belonging to the Petitioner at Plot 19, Ibex Hill, Lusaka. That the seized property in question is believed to be a proceed of crime, following preliminary investigations that revealed that the Petitioner has involvement in fraudulent dealing in minerals. Further that the Seizure Notice is exhibited as "**KN4**" in the Respondent's Affidavit in Opposition.

5.45. In Cross Examination by Mr. Botha, in response to question whether at Page 1 of her Witness Statement she could see the dates 17th and 18th August, 2023, **RW2** stated she could not. She stated that she was only aware of the search that she was part of and that her Statement does not state that there were two searches. She denied being part of the first search conducted in the morning.

5.46. When asked whether she had stated in her Witness Statement that the Search Warrant was signed by the Director General, **RW2** responded in the negative. When asked to confirm whether she had told Court that she saw the Director General sign the Seizure Notice, **RW2** stated that the Director General does not sign the Notice of Seizure. She agreed that the Director General signs the Warrant of Seizure.

- 5.47. **RW2** was referred to Paragraph 3 of her Witness Statement and she stated that the Petitioner's property was seized on 17th August, 2023. When asked to count 6 months from that date, RW2 arrived at 17th February, 2024. She responded that she was not aware that a Seizure Notice is only valid for a period of six months from the date of seizure. She also confirmed that what she seized was a house and that she did not find any drugs on the Property.
- 5.48. **RW2** admitted having interviewed the Petitioner and that she recorded a Warn and Caution Statement regarding the Property. She denied ever recording a Statement regarding proceeds of crime. She admitted having seized the Petitioner's Account but denied recording an Ordinary Statement or a Warn and Caution Statement. **RW2** also admitted that no part of her Witness Statement stated that she served a Notice of Seizure on the Bank. That she could not recall when she seized the Petitioner's Bank Account.
- 5.49. It was **RW2**'s response that she knew a lady called Lillian Chiyesu who works as an Assistant Officer in the matter which was in the High Court where the Petitioner was facing charges.
- 5.50. **RW2** when referred to a document at Page 6 of the Petitioner's Bundle gave the document Number as D15370 dated 28th December, 2023, and that it was 7 months from that date when she was giving her testimony in Court. She confirmed that the Petitioner had never been arrested regarding the document (Seizure Notice). When referred to the 2nd document, Number D15424, **RW2** confirmed seeing her signature there. In response to the question whether she

had gone to Lands Department to conduct a search, **RW2** stated that she did not do so personally, but other people did. That she did not know who had conducted the search but that she knew that somebody did. **RW2** admitted that she had not indicated in her Witness Statement about a search at Lands having been conducted. In further Cross Examination **RW2** responded that she was not aware of the events of 6th March, 2024, and that she knew that Lillian Chiyesu had not been lined up as a witness.

5.51. It was **RW2**'s response that she knows that the **Constitution** is higher than any other law. Answering the question whether she knew that landed property can not be seized, her position was that it was not true. That landed property can be seized for purposes of investigations under **Article 16**.

5.52. Referred to Page 5 of the Respondent's Bundle of Documents, **RW2** confirmed that the document refers to AFME Metals Exchange and that it was authored by ZRA. When asked to tell Court if ZRA is a Party in this matter, **RW2**'s response was in the negative. She admitted that AFME is not a Party to the Proceedings but that the Petitioner has an interest in the entity.

5.53. When referred to Page 3 of the Respondent's Bundle of Documents, **RW2** stated that the document was a Search and Seizure Warrant No. 42008 addressed to Nchindika Chola and that according to that document the premises where she was supposed to go to conduct a search was at Quashan Investment International Limited which was not a party but that the Petitioner has an interest in this entity.

- 5.54. In response to the question whether **RW2** had ever come across any NRC with the names Shadreck or Sedric, she stated that she actually came across two (2) and an inquiry was opened as regards the nationality of the Petitioner. That one of the documents bore the name Shadreck Kapasa Kasanda appearing on Seizure Warrant No. 42009 whereas on the other document, the spelling appears as Sedric Kapasa Kasanda. Further that the name they went by in the matter before Court is Sedric Kapasa Kasanda.
- 5.55. In Re- Examination by Mr. Chipulu and when asked to clarify in relation to Page 5 of the Respondent's Bundle of Documents, **RW2** stated that AFME is not a party to these proceedings. That however, the Petitioner Mr. Sedric Kapasa Kasanda is one of the known Beneficial Owners of this entity.
- 5.56. Clarifying on whether DEC had arrested the Petitioner, **RW2** stated that the Petitioner was facing Serious Offences which he was appearing for in the High Court and the Offences are Aggravated Robbery for money in excess of US\$5,000.00 Fraudulent Dealing in Minerals and Espionage. That looking at the gravity of the offences that the Petitioner was charged with, she seized the various properties including Bank Accounts, money, as well as the Property seized on 17th August, 2023. Further that they seized to preserve the Property that is held or controlled by the Petitioner in order to preserve or prevent the transfer of the said Property and as they wait for the outcome of the hearing of the High Court case. That in the event that the Petitioner is convicted the State can make an application to fall back on realizable

property that is owned by the Petitioner by way of making an application for forfeiture.

5.57. On whether **RW2** knew that the Seizure was only valid for 6 months, it was her response that she was not aware that the duration of the Notice of Seizure has an expiry date. That even then, with regard to this matter, they had gone beyond investigation so the aspect of duration would not arise.

6.0. SUBMISSIONS

6.1. The Petitioner who filed his final submissions on 19th August, 2024, started by setting out the provisions of **Sections 52 and 53 of the Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** pursuant to which he said the purported Warrants are issued by the Director General of the DEC.

6.2. It was submitted that it was their understanding that **Section 52 (1)** means that Officers can not search or seize property unless and until they are authorized by the Director General in writing meaning that it matters not that the Officer reasonably believes that he needs to enter a premise and search or seize property, they can not do so unless authorized. That the provision under **Section 52** is meant to be used administratively to control investigations and vet which matters should and should not be investigated.

6.3. A further contention is that because of the above, even with authorization from the Director General, the Officer needs to have a Warrant issued by a competent Court before they can search any premise or seize any property. Further that this view finds solace in the provisions **of Section 53** of the

Narcotic Drugs and Psychotropic Substances Act No.35 of 2021. That from the opening Statement of **Section 53(1)** it is clear that an Officer needs a Warrant before they can enter and search any premises.

- 6.4. The Petitioner adverted to **Section 118** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia** and submitted that failure to abide by the **Section** renders the search unlawful and a violation of one's Constitutional rights to privacy, property and protection of the law as guaranteed under **Article 11,16,17** and **18** respectively.
- 6.5. It was contended that the enactment of **Section 52** of the **Narcotics Drugs Act** has not taken away the requirement for a person to go to Court and obtain the necessary Warrant for a Search or Seizure and that failure to do so makes any such act illegal and void *ab initio*.
- 6.6. A related submission is that **Sections 52** and **53** clarify that while the Director General can authorize investigations, such authorization does not replace the need for a judicial Warrant. That specifically, **Section 52** mandates that any search must be conducted "with a Warrant", reinforcing the necessity of judicial oversight. Further that **Section 118** of the **Criminal Procedure Code Chapter 88** requires a Magistrate to issue a Search Warrant based on sworn evidence of reasonable suspicion because, this ensures that searches and seizures are conducted lawfully, protecting rights to privacy, property and due process under **Articles 11, 16, 17** and **18** of the **Zambian Constitution**.
- 6.7. It was argued that in any case, a perusal of the Witness Statement relied on by the Respondent's 1st Witness,

Nchindika Chola will show that the said Witness did not lead any evidence to show that she was authorized by the Director General to Search and Seize the Property subject of this suit. Further that the said Witness conceded in Cross Examination that the Search and Seizure Notice did not have the names Nason Banda, the Director General written on them and also conceded that the Seizure Warrant was written by her and included her name. Further that the Respondent's 2nd Witness did not tell the Court that the Search Warrant was signed by the Director General.

- 6.8. Regarding the position that the Seizure Notices issued have expired, the Petitioner cited the case of **Bwalya Chitalu Kalandanya & 3 Others v The Attorney General**¹ for the position that institution of proceedings relating to the seized property or the person from whom the property is seized ought to be made within six months of the date of seizure. That by logical implication, a Notice of Seizure issued pursuant to **Section 15** of the **Act** has a validity period of six months from the period it is placed on the property.
- 6.9. The Submission is that in the present case, the Record will show that it is not in dispute that the Seizure Notice was issued on 17th August, 2023, and as such the same expired on or about 18th February, 2024.
- 6.10. It was averred that the Respondent's 1st Witness also conceded in Cross Examination that she has never recorded a Warn and Caution Statement from the Petitioner with regards Money Laundering or Proceeds of Crime. That she also confirmed that no narcotic drugs were ever found on the Property. That with regards to the second Seizure Notice, no

evidence was led at the hearing of the Petition as the Officer that executed the said Notice was never called as a witness by the Respondent and none of the Respondent's Witness can speak to it.

6.11. In relation to breaches of the **Constitution**, the Petitioner asserted that his rights to property, safeguarded by **Article 16** of the **Constitution**, were violated when the Property was seized for investigative purposes as such an act is null and void. It was contended that in light of the provisions of **Article 16** of the **Constitution**, landed property can not be seized for purposes of carrying out an investigation because under this **Article** it is clear, as far as it relates to land, that it can only be lawfully taken possession of for purposes of conservation of natural resources or an agricultural development.

6.12. According to the Petitioner, the Record will show that the Respondent contravened **Article 16 (1) and (2) t (i) (ii)** of the **Constitution** when they seized Property No. Subdivision No.4 of Subdivision A of Lot No. 1751/M [1751/M/A/4/2] which is also known as Plot No. 19, Main Stree, Ibex Hill Lusaka on diverse dates solely for investigation purposes which said actions are illegal, null and void.

6.13. It was argued that the Petitioner's rights to privacy as protected under **Article 17** of the **Constitution** were violated without lawful justification. That it is clear under the **Constitution** that one can only enter into or unto the premises of another where consent has been given otherwise that would be a violation of the right of privacy. That in the case at hand, the Officers entered the Petitioner's premises

without a duly issued Warrant from a Court of competent jurisdiction in blatant disregard of the provisions of **Section 23** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2021** which is the law pursuant to which the purported Notices of Seizure were issued.

6.14. Our attention was drawn to the case of **Patel v The Attorney General**² where the Court stated as follows:

“I now come to Section 19. The question which I am asked on this Section is whether the opening, examination and seizure of the postal article constituted a contravention of the Applicant’s right to privacy of property as guaranteed by Section 19. That Section secures protection for the privacy of a person’s home and other property. Subsection (1) provides that, except with his own consent, no person may be subjected to the search of his person or his property or the entry by others on his premises. Here the Applicant complains of the search of his property without his consent by a customs officer purporting to act under the authority of regulation 35. The search is supported by the affidavit evidence of Mr. Hildutch, and the absence of consent appears from the Record of the Subordinate Court Proceedings at Page 3 lines 3-5. There was therefore, a prima facie breach of the applicant’s rights under Section 19 (1).....”

- 6.15. It was submitted that there is no solace to be found by the Respondent in the provisions of **Sections 52 and 53** of the **Narcotic Drugs and Psychotropic Substances Act** as the said provisions do not permit them to abrogate the provisions of **Article 17** of the **Constitution**. That in fact, the provisions of **Section 53** requiring them to have a Warrant seeks to protect **Article 17** and therefore, the Respondent having acted outside the provisions of **Section 53** can not seek solace from it.
- 6.16. A related submission is that the import of **Section 52** is not to over ride the requirement of **Section 118** of the **Criminal Procedure Code** which requires that a Warrant be obtained on oath before a Magistrate. That the power of the Director General of the Drug Enforcement Commission only goes as far as permitting a case to be investigated and the issuance of a Warrant is a preserve of the Court. That this is so because the Law Enforcement Agencies can abuse this preserve if given to them and the only institution that should ensure citizens' rights are protected are the Court.
- 6.17. The Petitioner reiterated that the Respondent's 1st Witness indicated that the purported Warrant was filled in by herself at the Petitioner's residence which clearly means that it was not even issued by the Director General whom they purport to have given authority. The rider is that the only exception to the protection of one's privacy is lawful entry that stems from a law that is acceptable in a democratic society. The submission therefore, is that this exception can not cover the actions of the Respondent's Officers who arrogantly entered the Petitioner's premises without a Warrant and

without consent which in itself is turning the country into a Police State where the enforcement agencies do as they please without consequence.

- 6.18. It is the Petitioner's Submission that the Petitioner's rights having been violated, he is entitled to damages in accordance with the case of **Stanley Kingaipe and Charles Chookole v Attorney General**³ wherein it was stated that:

“In my considered view, this is a case where the petitioners' right to privacy and protection from inhuman treatment was infringed and petitioners are entitled to damages. Otherwise, why have rights enshrined in the Supreme law of the land which can be violated at will without redress? This certainly was not the intention of the framers of our Constitution”.

- 6.19. The Petitioner drew our attention to the Right to a Fair Trial as enshrined in **Article 18** of the **Constitution** citing the case of **Major Isaac Masonga v The People**⁴ where the Supreme Court held as follows:

“It is trite law and a constitutional duty for the prosecution to guarantee a fair trial and a fair trial starts with investigations. Any short comings in the investigations may seriously jeopardize the right to a fair proceeding, and thereby also prejudice the accused person's rights to be presume innocent.

6.20. The allied Submission is that from the evidence of the Respondent's Witnesses, it is clear that the acts of the Respondent's agents are in contravention of the presumption of innocence as the Petitioner is suffering a punishment even before he is charged with any offence relating to the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** or the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** and let alone presented to any Court of Competent jurisdiction.

6.21. The Petitioner adverted to the Supreme Court's guidance in the **Isaac Masonga** case that any misgivings in the investigation process is a slap in the face of the right to a fair trial. That as the Record will show and as submitted above, the conduct of the Respondent's Officers are more than shortcomings and they are a slap in the face of the Constitutional provisions that protect the fundamental Human Rights of all persons in Zambia as may be appreciated from the case of **Patel v The Attorney General**² where it was stated that:

“The relationship between a law restricting the fundamental rights and freedoms of the individual set forth in Chapter III of the Constitution and the permitted restrictions set forth in the said Chapter III must be rational and proximate”.

6.22. That consequently it was submitted that the actions of the Respondent having been unjustified can not form an exception to **Article 18** of the **Constitution** and of **Sections 52** and **53** of the **Narcotic Drugs Act** and seek to

create such exception as the same is not rational and proximate to the exceptions in **Article 18** which is unconstitutional and illegal.

6.23. The Petitioner contended that the DEC Officers acted arbitrarily and therefore outside the permissible exceptions under the Bill of Rights. The Submission is that every person has the right to demand that they are fully informed and be allowed to participate in the process that the authorities have set in motion and every person has the right to be treated fairly as guaranteed under **Article 18**. That the principles of fairness are principles in their own right and should be allowed to pervade all open and just societies as envisioned in the case of **Christine Mulundika and 7 Others v The People**⁵.

6.24. It was the Petitioner's contention that though he was not told what the investigators were looking for and what he had done, one would indeed ask if there was any suspicion of commission of any offence at all. That in fact the law recognizes a situation where there is reasonable suspicion of commission of any offence and the Witnesses said there was mere suspicion and not reasonable suspicion.

6.25. We were referred to the case of **Daniel Chizoka Mbandangoma v Attorney General**⁶ where the High Court of Zambia considered the meaning of reasonable suspicion and opined that in order to justify the arrest, the Arresting Officer must show that he had reasonable suspicion that the person had committed the offence which can be justified if the facts, as they appear to the Officer, at the time, were such as to warrant bringing the man to Court or

in other words that he was probably guilty. That the Court further held, with reference to the case of **Wiltshire v Barret**⁷, that in case of a dispute in relation to reasonable suspicion, it is for the jury to find that the facts as they appear to the Officer at the time or the grounds upon which he formed his opinion, were such as to warrant him forming that opinion and it is for the Judge to then rule whether those facts considered objectively, were such as to warrant him forming that opinion and as such afforded a reasonable basis.

6.26. Further, reference was made to the case of the **People v Austin Liato**⁸ where the Supreme Court considered the meaning of reasonable suspicion and stated:

“Reasonable suspicion is not arbitrary, there ought to be factual basis upon which it is anchored”.

6.27. It was submitted that trespass is actionable *per se* and the fact that the Respondent’s Officers walked just a step on to the property without a licence to be there, they should be deemed to have walked all the way and thus had trespassed thereon. That it is trite that common law does not permit Police Officers or anyone else to ransack anyone’s house, or to search for papers or articles therein, or to search his person, simply to see if he may have committed some crime or other, that would be trespass, as per **Lord Denning M. R.** in the case of **Ghain v Jones**⁹ where it was held that:

“The common law does not permit Police Officers, or anyone else to ransack anyone’s home, or to search for papers or articles

herein, or to search his person, simply to see if he may have committed some crime or other. If Police Officers should do so they would be guilty of trespass”.

6.29. It is contended that the Warrant issued by the Director General as appears at Page 1 of the Petitioner’s Bundle of Documents, had no basis contrary to the Respondent’s agents’ confidence suggesting that they have a right. The argument is that the Director General of DEC has no authority to issue Warrants and in the event that the law does confer on him such power, the said power contradicts **Part III** of the **Constitution** thus illegal and void to the extent of the inconsistency. We were also invited to note that at Page 31 of the Respondent’s Bundle of Documents, there is a Warrant signed by a Magistrate and shows clearly what the Warrant should look like and this supports the Petitioner.

6.30. The Respondent filed its final submission on 10th September, 2024, and prefaced the same by stating, among others, that it is not in dispute that the Petitioner is the registered owner of Plot No. 19, Main Street, Ibex Hill Lusaka. Further, that it is also not in dispute that the Petitioner’s residence was searched and Property seized by the Drug Enforcement Commission.

6.31. According to the Respondent, what is in dispute is whether the search conducted was illegal and whether the Respondent has power to seize landed property. The Respondent argues that the DEC has the right to search premises where there are reasonable grounds to suspect

that a property liable for seizure is concealed or deposited thereon pursuant to a Search Warrant issued by the Director General as provided in **Section 52** of the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021**.

- 6.32. It was the Respondent's submission that from the preliminary investigations, it was revealed that the Petitioner was involved in illegal activities and it was at that point that the DEC Officers reasonably suspected that a property liable for seizure might have been concealed at the Petitioner's residence. That in view of the provisions of **Section 52** referred to above, the submission is that the document from which the Respondent derived its authority to enter and search the Petitioner's residence was valid and that this is because it is only required to be issued by the DEC Director General and not the Court.
- 6.33. According to the Respondent, the Petitioner's Property was seized for purposes of investigations into suspected Money Laundering on the part of the Petitioner. That generally, the power to seize property of any kind for the purposes of investigations and subsequent trial or inquiry is provided for under **Article 16 (2) (t)** of the **Constitution**.
- 6.34. It was submitted that property liable for seizure pending investigations is "*any property*" and that the **Constitution** defines "*property*" to include land or landed property. **Article 266** of the **Constitution** was referred to for this.
- 6.35. The Respondent argued that the Petitioner's contention that landed property can only be seized for agricultural purposes is totally flawed. That the correct interpretation of the provision is that landed property can be seized for purposes

of investigations, trial or inquiry, or for carrying out thereon of work relating to conservation of natural resources or for agricultural development. That **Article 16 (2) (t) (i) and (ii)** is only intended to limit the scope of works for which landed property should be seized or compulsorily acquired.

6.36. That notably, **Article 16 (2) (t)** requires that seizure of a property for purposes of investigations be traceable to a particular law and that for DEC, this power appears under **Section 15** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** which provides that:

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

6.37. The Respondent submitted that taking possession of the Property in contention was to prevent the Property from being tempered with or disposed of by the Petitioner while investigations or trial are ongoing. That therefore, the seizure of the Petitioner’s Property is valid at law. Further that the continued seizure is valid as the purpose of seizure can go beyond investigations and extend to trial or an inquiry as per **Article 16 (2) (t)**. That indeed, there was evidence that the Petitioner is currently undergoing Criminal Prosecution for the offence of Aggravated Robbery and Illegal Trading in Minerals, both of which are predicate offences of Money Laundering.

6.38. A further contention by the Respondent is that the Seizure Notice issued under the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** can not be

invalidated simply because the search of the Petitioner's residence was done under the **Narcotic Drugs and Psychotropic Substances Act**. That this is because the search was done pursuant to the DEC's mandate under **Act No. 35 of 2021** while the Seizure of the Property in contention was done pursuant to the DEC's mandate under **Act No. 14 of 2021**.

7.0. CONSIDERATION AND DECISION OF THE COURT

- 7.1. We have carefully considered the Petition and the Amended Affidavit Verifying Petition; the Answer and Affidavit Verifying Answer; the Parties respective Witness Testimonies and Submissions by Counsel. We are indebted for the industry by Counsel.
- 7.2. The view we take from the perusal of the evidence especially, is that there is no dispute regarding the facts in this matter. What is in dispute, as far as we can discern, is how the facts sit with the law leading to the Petitioner moving the Court for redress on the reliefs set out under Paragraph 2.13 above.
- 7.3. We are satisfied that the Petition is properly before us pursuant to **Article 28** of the **Constitution** couched in the following terms:

“(1) Subject to clause 5, if any person alleges that any of the provisions of Article 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available,

that person may apply for redress to the High Court which shall;

(a)hear and determine any such application

(b)determine any question arising in the case of any person which is referred to it in pursuance of clause (2)

and which may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Article 11 to 26”,

7.4. In our jurisdiction, the High Court has had occasion to deal with matters touching on allegations of Constitutional violation by State Actors. The cases of **Kachasu v The Attorney General**¹⁰ and **Patel v The Attorney Gernal**² were cited in the recent case of **Ronald Kaoma Chitotela v Anti-Corruption Commission and Others**¹¹ wherein it was opined with respect to the burden of proof that:

“..... The Applicant carried the burden of proving that his rights under the relevant provisions have been contravened”.

7.5. A perusal of the reliefs sought by the Petitioner as set out in Paragraph 2.13 reveals that most of them are for declarations and orders. We find guidance in the Supreme Court case of **Communication Authority v Vodacom Zambia Limited**¹² on what the Courts need to consider in

dealing with declaratory reliefs. In this case, the Supreme Court stated, among others, that:

“A declaration is a discretionary remedy. A party is not entitled to it as of right. Of course the discretion must be judiciously exercised.

The Court:

(a) will not pass a declaratory judgment casually, lightly, or easily. The remedy should be granted for good cause, on proper principles and considerations. It must be made sparingly; with care and utmost caution. It is a remedy which Courts discourage, except in very clear cases.

(b) will not grant a declaration when no useful purposes can be served or when an obvious alternative and adequate remedy, such as damages is available.....”.

7.6. Proceeding to evaluate and determine the reliefs enumerated by the Petitioner, we propose to deal with the first, second, third and fifth reliefs together as they are inter-related. The fourth relief will be dealt with alone before finally dealing with the sixth and 7th reliefs together.

7.6.1. *A declaration that the Respondent’s Agents in Seizing the Property No. Subdivision 4 of Subdivision A of Lot No. 1751/M [1751/M/A/4/2] which is also know as Plot 19, Main Street, Ibex Hill Lusaka on diverse dates solely for*

*investigations purposes as is in this case, is illegal, null and void as it contravenes **Article 16 (1) and (2) t (i) (ii) of the Constitution;***

7.6.2. *A declaration that the Officers from the Drug Enforcement Commission have no authority to issue Seizure Warrants in the manner they did and against the provisions of the **Criminal Procedure Code Chapter 88 of the Laws of Zambia and the Prohibition and Prevention of Money Laundering Act No. 14 of 2001 of the Laws of Zambia;***

7.6.3. *A declaration that the search and seizure of the Petitioner's Properties by the Drug Enforcement Commission was ultra vires, void ab initio and illegal; and*

7.6.4. *A declaration that the Drug Enforcement Commission return all the Properties that were seized from the Petitioner.*

7.7. With respect to **Sections 52 and 53 of the Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** pursuant to which the Warrants were issued, the Petitioner contends that Officers can not search or seize the Property unless and until they are authorized by the Director General in writing. Further that even with authorization from the Director General, the Officer needs to have a Warrant issued by a competent Court before they can search any premises or seize any property.

- 7.8. The Respondent's position on the other hand, is that the document from which the authority was derived to enter and search the Petitioner's residence was valid. That this is because it is only required to be issued by the Drug Enforcement Commission's Director General and not the Court.
- 7.9. Given the diametrically opposed positions by the Parties, it becomes necessary to set out **Sections 52** and **53** of the **Narcotic Drugs and Psychotropic Substances Act** as below:

"Section 52

"(1) Where the Director General has reasonable grounds to suspect, that in, or on, any premises, there is concealed or deposited any property liable to forfeiture under this Act, or as to which an offence under this Act is reasonably suspected to have been committed, or any book or document directly, or indirectly relating to, or connected with, any dealing or intended dealing, whether within or outside the Republic, in respect of any property liable for forfeiture under this Act, the Director General may, by order in writing authorize an investigating officer or police officer to;

(a) enter a premises and search for, seize and detain the property, book or document"

Section 53

“(1) An Investigating Officer may, with a Warrant, at any time.-

(a) enter and search any premises or any other premises, including a private dwelling, where information or documents which may be relevant to an investigation may be kept;
(b) search any person on the premises if there are reasonable grounds for believing that the person has personal possession or any documents or article that has a bearing on the investigation except that a person shall only be searched by a person of the same sex”.

7.10. What we discern from the provisions of the Sections above is that the Director General of the Drug Enforcement Commission is vested with power to issue a Search Warrant in form of an order in writing to an Investigating Officer to enter and search a dwelling house pursuant to **Section 52** of the **Narcotic Drugs and Psychotropic Substances Act**.

7.11. Further, where an order to search is issued under the hand of the Director General of the Drug Enforcement Commission in reliance of **Section 52 (1)**, there is no requirement for the Search Warrant to be signed by the Magistrate as argued by Counsel on behalf of the Petitioner.

7.12. In respect to **Section 53** of the **Narcotic Drugs and Psychotropic Substances Act**, we hasten to indicate that the same is not couched in mandatory terms. This is distillable from reference to an Investigations Officer who “may” with a Warrant at any time enter and search premises. The import

of this is that an Investigating Officer can carry out investigations on the basis of suspicion that a criminal offence may have been committed.

7.13. A literal interpretation of the Statutory provisions is that a Warrant can either be obtained from the Director General of the Drug Enforcement Commission or from the Magistrate pursuant to **Section 118** of the **Criminal Procedure Code**. Where it is obtained from the Director General pursuant to **Section 52 (1)**, there is no requirement for such a Warrant to be signed by a Magistrate because the supervisory oversight by the Magistrate is excluded. In our estimation, the rationale for this is simply that at certain times, exigencies require urgent investigations which equally require quick interventions by investigative agencies to investigate matters expeditiously to preserve the evidence.

7.14. Under **Section 53** of the **Narcotic Drugs and Psychotropic Substances Act**, an Investigating Officer is given latitude to either approach the Director General of the Drug Enforcement Commission or obtain the Warrant from Court pursuant to and in compliance with **Section 118 of the Criminal Procedure Code**.

7.15. Having established that the Search Warrant can be issued either by the Director General of the Drug Enforcement Commission under **Section 52** of the **Narcotic Drugs and Psychotropic Substances Act** and that the Court has power to issue a Search Warrant under **Section 118 of the Criminal Procedure Code**, the argument by the Petitioner that the Drug Enforcement Commission has no authority to issue a Seizure Warrant is bereft of merit.

- 7.16. Before we leave this point, it is prudent that we address the submission made on behalf of the Petitioner that in the event that the law confers powers on the Director General of the Drug Enforcement to issue Warrants, then such power contradicts **Part III** of the **Constitution** and thus illegal to the extent of its inconsistency. Our view is that this claim is not part of the reliefs sought by the Petitioner and as such, we will not entertain the same. We are fortified in taking this position because it is trite that reliefs sought in a Petition or indeed in any claim/pleading can not be sneaked in by way of submissions, a manner which does not afford the other party an opportunity to respond.
- 7.17. The Petitioner has submitted that the Respondent issued another Notice of Seizure on the same property that already had a Notice of Seizure issued on it and that this property in question was already a subject of legal proceedings. Our short comment is that we amply dealt with this in our Ruling of 26th April, 2024, when we dismissed the Petitioner's Application to commence Contempt Proceedings. We found that there was no duplicity because the second Notice of Seizure was issued by the Respondent to correctly capture the Property details as they appear in the Ministry of Lands Register.
- 7.18. It has been argued by the Petitioner that seizing the Property solely for investigations purposes is illegal, null and void as it contravenes **Article 16 (1) and (2) (t) (i) (ii)** of the **Constitution**. The Respondent on the other hand argues that the power to seize property of any kind for purposes of investigations is provided for under the same **Article**.

7.17. We set out **Article 16 (2) (t)** to resolve the opposing positions by the Parties.

Article 16

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

(t) for so long as may be necessary for the purpose of any examination, investigation or trial or inquiry or, in the case of the land, the carrying out thereon

(i) the work for the purposes of the conservation of natural resources or any description; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out”.

7.20. From our reading and understanding of the provisions above, it is apparent to us that the Petitioner has grossly misapprehended the import of the provision which clearly can not be interpreted to mean that landed property can only be seized for agricultural purposes. We are inclined to agree with the position taken by the Respondent that landed property can be seized for purposes of investigations, trial or

inquiry and that the provisions of **Article 16 (2) (t) (i)** and **(ii)** are only intended to limit the scope of works for which landed property should be seized or compulsorily acquired.

7.21. In our view, what is required by **Article 16 (2) (t)** is that seizure of a property for purposes of investigations should be traceable to a particular law. The Respondent has clearly demonstrated that the power to proceed as it did is traceable to **Section 15** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** which provides that:

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

7.22. We find that there was nothing inconsistent with or in contravention of the **Constitution** and the case of **Patel v The Attorney General**² cited by the Petitioner to the effect that the relationship between a law restricting the fundamental rights and freedoms of the individual as set out in **Part III** of the **Constitution** and the permitted restrictions must be rational and proximate.

7.23. The Petitioner has contended that the Drug Enforcement Commission Officers acted arbitrarily outside the Bill of Rights and in flagrant violation of his rights as guaranteed under **Article 18** of the **Constitution** and wondered whether there was any suspicion of commission of any offence at all. The Respondent has on the other hand contended that the Petitioner's Property was lawfully seized for purposes of investigation into suspected Money Laundering. That the Respondent reasonably suspected

that a property liable for seizure might have been concealed at the Petitioner's residence.

- 7.24. Reasonable suspicion was stated by **Malila, J S** (as he then was) in the case of the **People v Liato**⁸ where he stated that:

“Whether grounds of suspicion actually existed at the time the suspicion is formed is to be tested objectively. Consequently, a suspicion may be reasonable even though subjectively, it was based on unreasonable grounds. In our considered view, proof of reasonable suspicion never involves certainty of the truth. Where it does, it ceases to be suspicion and becomes a fact”.

- 7.25. On our review of the evidence before us, we have found that the Petitioner in Cross Examination conceded that at the time of hearing this Petition, he was undergoing Criminal Prosecution for the offences of Aggravated Robbery and illegal trading in Minerals. Given this position, it can in our view, be reasonably justified that the Respondent had factual basis for reasonable suspicion that prompted the seizure of the Petitioner's Property within the meaning envisaged by the case of the **People v Liato**, above.

- 7.26. The Petitioner contends that **Article 17** of the **Constitution** was abrogated and that **Section 53** of the **Narcotic Drugs and Psychotropic Substances Act** requiring them to have a Warrant seeks to protect **Article 17** and that there is no law that allows the DEC Officers to enter premises without a duly signed Warrant by the Magistrate. We have already dealt with the aspect of the signing of Warrants by the Courts and the Director General

of the Drug Enforcement Commission, so we will not belabour the point.

7.27. For purposes of context, we set out **Article 17** of the **Constitution** as below:

“17(1) Except with his own consent, no person shall be subjected to the search of his person or his property or to the entry by others on his premises.

(2) Nothing contained in or done under the authority of law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision

(a) that is reasonably required in the interest of defence, public health, town and country planning, the development and utilization of any property for a purpose beneficial to the community;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other person; and

(c) that authorises an officer or agent of Government, a local Government authority or a body corporate established by law for a public purpose to enter on the premises of anything thereon for the purpose of

any tax, carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate as the case may be....

And except so far as that provision, or as the case may be, anything done under the authority thereof is shown not to be reasonably justified in a democratic society”.

7.28. We have perused the Record and found as a fact that the Respondent has exhibited in the Affidavit in Opposition the Amended Affidavit verifying facts “**KN1**” and “**KN2**” which are Seizure and Search Warrants issued on 17th August, 2023, both signed by the Director General of the Respondent and the Petitioner. On one “**KN2**” the Petitioner’s response to the question whether he had any complaints regarding the search, was that he had none. On another, “**KN1**” the Petitioner’s Response was that the search was not done in a professional manner. What, in our view, the Petitioner ought to have done is to demonstrate and provide proof that the search was not done in a professional manner. It is not, in our view, enough to allege that the Officers were armed with guns and conclude that the search was done unprofessionally. It is common knowledge that guns are normally carried by law enforcement Officers in the course of their operations. What is certainly wrong is if the Officers misuse their fire arms

- 7.29. The import of the above is that the Respondent did in fact issue a Seizure and Search Warrants pursuant to **Sections 52 and 53** of the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021**. The Petitioner contends that the Warrants were filled out by the Respondent's 1st Witness and not the Director General. In re-examination **RW1** clarified that the same were signed by the Director General and directed to her.
- 7.30. What we are able to decipher from our analysis of the Search and Seizure Warrants is that what **RW1** filled in is the content after the Director General's signature where she was certifying having issued a true copy and original of the Search and Seizure Warrant on the Petitioner. At this stage, we can not declare that the Properties seized from the Petitioner be returned because doing so will inevitably curtail the investigations by the Respondent. It will in fact be going against the well settled principle that civil matters can not be used to stop criminal investigations as instructively stated in the of **C&S Investments Limited and Others v The Attorney General**¹³
- 7.31. In our considered view following our analysis, the Petitioner's right to privacy was not violated as alleged. We are fortified in taking this position because the Seizure and Search Warrants were lawfully issued pursuant to **Sections 52 and 53** and as we have found already, did not violate **Section 118** of the **Criminal Procedure Code**.
- 7.32. The fourth relief sought by the Petitioner is for:

"An order that Seizure of the Petitioner's Properties without the Petitioner ever being charged or tried for

any offence related to the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** or the **Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** both pre and post the seizure violates the Petitioner's rights to a fair trial, jeopardizes and impugns his right to be presumed innocent".

7.33. The Petitioner drew our attention to **Article 18** of the **Constitution** enacted as follows:

"18(1) If any person is charged with a Criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence

(a) shall be presumed innocent until he is proved or has pleaded guilty".

7.34. Placing reliance of the case of **Isaac Masonga v The People**⁴, the Petitioner's position is that the Respondent's agents contravened the presumption of innocence until proved guilty and is suffering punishment even before he is charged with an offence. On the other hand, the Respondent's position is that the Petitioner is currently undergoing criminal prosecution for the offences of Aggravated Robbery and illegal trading in Minerals both of which are predicate offences of Money Laundering.

7.35. We have perused the Record and found evidence by both the Petitioner and the Respondents that the Petitioner's Properties were seized for purposes of investigations and that the outcome of investigations could either lead to the matter proceeding to trial or to the properties being handed back to the Petitioner as the case may be. In our view, the Petitioner's right to be presumed innocent can not be said to have been violated by reason only that the Officers were carrying out their investigations in the manner done. The Respondent's actions, in our view, can not at this stage be said to be contrary to the guidance in the **Major Isaac Masonga case**⁴ in relation to a free and fair trial. More so that we have found that there was no blatant disregard of **Section 118** of the **Criminal Procedure**. Further, the **Constitution** allows for seizure of property in the course of investigations, contrary to the Petitioner's assertions.

7.36. We now proceed to considering the last two reliefs which we stated we would deal with together.

7.29.1. Damages for anguish, impacting the well being of the occupants, particularly minors and loss of use of Property

7.29.2. Damages for trespass to Property

7.37. The Petitioner's position is that the actions of the Drug Enforcement Officers amounted to trespass to land, defined in the Supreme Court case of **Shell and B.P Zambia Limited v Conidaris and Others**¹⁴ as:

“Trespass to land is an unlawful entry on land in the possession of another, a licence

prevents the entry of the licensee from being a trespass and renders it lawful”.

7.38. The Respondent's position is that the search of the Petitioner's residence was lawful as it was done pursuant to a validly executed Search Warrant under the **Narcotic Drugs and Psychotropic Substances Act** pending investigations into suspected Money Laundering activities.

7.39. Having considered the rival arguments fronted by the Parties, the inescapable view we form is that there was no trespass as alleged by the Petitioner. We say so because we have found that there were Seizure and Search Warrants issued by the Director General of the Drug Enforcement Commission permitting the Officers to conduct the Search pursuant to **Section 52** of the **Narcotic Drugs and Psychotropic Substances Act**. The common law position can not override or supersede clear statutory provisions, so the case of **Ghain v Jones**⁹ cited by the Petitioner would not be applicable in the circumstances of this case.

7.40. Regarding the claim for damages for anguish, our view is that these are related to whether or not there was trespass which as we have found, there was none. In consequences, it is our view that the Petitioner has not made out a case that he or the other occupants, particularly the minors, are entitled to damages. Because we have found that the Search and Seizure were lawful, the Petitioner has not proved that he or the occupants suffered damage entitling them to the award of the damages as by law required.

7.41. We find comfort for our position in the case of **Morgan v Sim**¹⁵ where it was held that:

“The party seeking to recover compensation for damages must make out that the party against whom he complains was in the wrong, the burden of proof is clearly upon him, and he must show that the loss is attributed to the other party. If at the end, he leaves the case in even scales and does not satisfy the Court that the loss was occasioned by the default of the other party, he can not succeed”.

7.42. Further, in this jurisdiction we wholly adopt the guidance laid down by the Supreme Court in the case of **J. Z. Car Hire v Chala Scirocco Enterprise Limited**¹⁶ that:

“This Court has said it in a number of cases such as Zulu v Avondale Housing Project and Mhango v Ngulube and Others that it is for the party claiming the damages to prove the damage, never mind the opponent’s case”.

7.43. Amplifying our position on the rationale for the award of damages, the Learned authors of **Mc Gregor on Damages, 15th Edition** at Paragraph 9 on Page 7 state as follows:


“The object of an award for damages is to give the plaintiff compensation for the damages, loss or injury he has suffered”.

7.44. Quiet clearly, the Petitioner can not, under the circumstances outlined above be entitled to judgment for damages or loss which he has failed to prove.

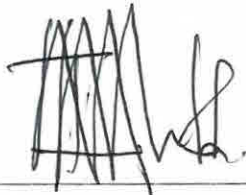
8.0. CONCLUSION

- 8.1. Based on our analysis of the facts in the context of the authorities cited, we find that the Petitioner has failed to show that the actions by the Officers from the Joint Investigative Team, violated his rights in contravention of **Articles, 11, 16, 17 and 18** of the **Constitution of Zambia**.
- 8.2. We find, on the whole, that the Petitioner has not made out a case to prove his claims for damages on the balance of probabilities.
- 8.3. Consequently, the Petition is dismissed in its entirety with costs to the Respondent to be taxed in default of agreement.

DELIVERED AT LUSAKA THIS 20TH DAY OF JANUARY, 2025.



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



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



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