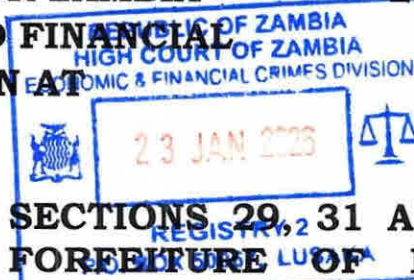


IN THE HIGH COURT FOR ZAMBIA 2024/HPEF/002
AT THE ECONOMIC AND FINANCIAL
CRIMES COURT HOLDEN AT
LUSAKA.



IN THE MATTER OF: SECTIONS 29, 31 AND 71 OF THE
FORFEITURE OF PROCEEDS OF
CRIME ACT NO. 19 OF 2010

IN THE MATTER OF: SECTION 102 (1) (e), AND 99 AS READ
WITH SECTION 98 OF THE INCOME
TAX ACT CHAPTER 323 OF THE
LAWS OF ZAMBIA.

BETWEEN:

ANTI - CORRUPTION COMMISSION	APPLICANT
AND	
FRANCIS MUCHEMWA	1 ST INTERESTED PARTY
ALTITUDE PROPERTIES LIMITED	2 ND INTERESTED PARTY
FRILTECH NETWORKS ZAMBIA LIMITED	3 RD INTERESTED PARTY
MASSBREED INVESTMENTS LIMITED	4 TH INTERESTED PARTY

**BEFORE THE HONOURABLE JUSTICES P. K. YANGAILO, A.
MALATA-ONONUJU AND I. M. MABBOLOBOLO, ON THE 23RD
DAY OF JANUARY, 2026.**

For the Applicant: N/A

For the 1st, 2nd and 3rd Interested Parties: N/A

RULING ON APPLICATION FOR AN ORDER FOR COSTS

**MABBOLOBOLO I. M. J, DELIVERED THE RULING OF THE
COURT.**

A. CASES REFERRED TO:

- New Plast Industries v Commissioner of Lands and Another (2001) ZR 51;*
- Asset Recovery Agency v Pamela Aboo (2018) EK RL;*

3. *Tekla Nandjila Lameck v President of Namibia (2012) (1) NR 255 (HC)*;
4. *Sydney Mwansa v The Director of Public Prosecutions Appeal No. 276/2021*; and
5. *Raymond West Evans v Loanco Limited Appeal No.51 of 2025*.

B. LEGISTRATION REFERRED TO:

1. *High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia*.

C. OTHER WORKS REFERRED TO:

1. *Matibini P, Zambian Civil Procedure Commentary and Cases, 2017, Lexis Nexis*.

1. INTRODUCTION

- 1.1. This is a Ruling on the 1st, 2nd and 3rd Interested Parties' ("the Interested Parties") *Ex-Parte* Application on Summons for an Order for Costs pursuant to **Order XVII Rule 1** of the **High Court Rules, Chapter 27** of the **Laws of Zambia**.
- 1.2. The Application filed on 18th December, 2025, is accompanied by an Affidavit and Skeleton Arguments.
- 1.3. Given the nature of the Application and deposition in the Affidavit, we elected to determine the Application on the basis of the documents on Record as well as the applicable principles regarding Costs and filing of documents during Vacation.
- 1.4. We are fortified in dispensing with the oral hearing by the holding of the Supreme Court in the case of **New Plast Industries v Commissioner of Lands and Another**¹, where it was stated, among others, that:

“The content of what amounts to the hearing of the parties in any proceedings can take either the form

of oral or written evidence. Where the evidence in support of an application is by way of Affidavit, the deponent cannot be heard to say he was denied the right of hearing simply because he had not adduced evidence”.

2.0. AFFIDAVIT EVIDENCE

- 2.1. The Affidavit in Support of the *Ex-Parte* Application was deposed to by **Mulenga Mwango** in his capacity as the Advocate seized with conduct of the matter on behalf of the Interested Parties.
- 2.2. Mr. Mwango averred that the Applicant herein did on 19th January, 2024, commence Proceedings for a Non-Conviction Based Order of Tainted Property against the Interested Parties. That the Interested Parties filed their detailed Affidavit in Opposition, List of Authorities and Skeleton Arguments.
- 2.3. It was deponed that the matter was heard by this Court following which Judgment was reserved for 30th November, 2024. That on 24th November, 2024, the Applicant discontinued the suit by way of Notice of Discontinuance filed into Court as evidenced by the exhibit marked “**MM1**” which is a letter of service of the same.
- 2.4. The Deponent averred that Proceedings before this Court are civil in nature and are subject to Costs as may be directed by the Court. That the matter was discontinued at the instance of the Applicant and as such, the Applicant is liable to Costs relating to the Proceedings occasioned by it. Further that this

Court possesses power to grant and order Costs in favour of the Interested Parties.

3.0. SKELETON ARGUMENTS

- 3.1. In the Skeleton Arguments, reliance was placed on **Order XVII Rule 1** of the **High Court Rules Chapter 27** of the **Laws of Zambia** for the position that the Court has discretion to allow payment of Costs to the Defendant upon discontinuance or withdrawal of a matter by the Plaintiff.
- 3.2. The Learned Author Patrick Matibini J, on **Zambian Civil Procedure Commentary and Cases** at Page 29 was cited for the position that as a general rule, a Plaintiff who discontinues an action against the Defendant is liable for the Defendant's Costs incurred on or before the date of service of the Notice.
- 3.3. Regarding the issue of Forfeiture Proceedings being civil in nature, the Kenyan case of **Asset Recovery Agency v Pamela Aboo**², the Namibian case of **Tekla Nandjila Lameck v President of Namibia**³ and the Zambian case of **Sydney Mwansa v The Director of Public Prosecutions**⁴ were all called in aid.

4.0. CONSIDERATION AND DECISION OF THE COURT

- 4.1. As a beginning point, we proceed to determine whether this Application is properly before us. According to our Records, the Application on behalf of the Interested Party was filed on 18th December, 2025, which is a date falling within the period of one of the four vacations observed by the Courts.
- 4.2. **Order XLIX Rule 3 (1)** of the **High Court Rules** provides that:

“The vacations to be observed in the several Courts and offices of the High Court shall be four in every year, that is to say, the Easter vacation, the Whitsum vacation, the Michaelmas vacation and Christmas vacation. The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday, the Whitsum vacation shall commence on Saturday before whit Monday and shall terminate on the Tuesday after whit Sunday; the Michealmas vacation shall commence on 8th August and shall terminate on 6th September; and the Christmas vacation shall commence on 11th December and terminate on 9th January”.

4.3. Furthermore, **Order II Rule 4** of the **High Court Rules, High Court Act, Chapter 27** of the **Laws of Zambia** provides that:

“Summons may be issued and pleadings may be amended, delivered or filed during the last eleven days of the Michealmas and Christmas vacations respectively, but Pleadings shall not be amended, delivered or filed during any other part of such vacations unless by the direction of the Court or a Judge.

4.4. In this case as already stated, the Summons were filed on 18th December, 2025, well into the Christmas vacation but certainly before the 11 days window period before the end of the Christmas vacation which is the permissible period for filing of Summonses without the direction of Court.

4.5. Given the above state of affairs, the Summons filed on behalf of the Interested Parties on 18th December, 2025, are improperly before us and we can not proceed to determine the Application. This position was endorsed by the Court of Appeal in the case of **Raymond West Evans v Loanco Limited**⁵ to the effect that Court lacks jurisdiction to determine process filed during the Vacation period without obtaining Leave of Court, unless the matter falls under the specified exceptions

5.0. CONCLUSION

5.1. Having determined that the Summons and Application are not properly before us for not having been filed during the permissible period without leave of Court, the Interested Parties' Application for Costs is dismissed forthwith.

5.2. We make no Order as to Costs.

DELIVERED AT LUSAKA THIS 23RD DAY OF JANUARY, 2026.



P. K. YANGAILO

HIGH COURT JUDGE.



A. MALATA- ONONUJU

HIGH COURT JUDGE.



I. M. MABBOLOBOLO

HIGH COURT JUDG.