

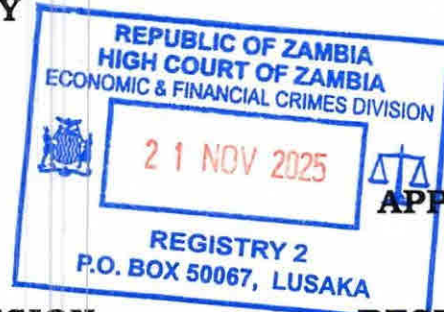
IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES DIVISION REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)
BETWEEN:

2024/HPEF/029

GODFREY SHAMANENA

AND

ANTI-CORRUPTION COMMISSION



APPLICANT

RESPONDENT

Before the Honourable Lady Justices S. M. Wanjelani, P. K. Yangailo and A. Malata-Ononuju, on this 21st day of November, 2025.

For the Applicant:

Mr. J. Kayula, Mr. C. Makanda and Mr. E. Daka - Messrs. Lewis Nathan Advocates.

For the Respondent:

Mrs. A. K. Bento and Mrs. N. Chisanga Chizalila - The Anti-Corruption Commission

JUDGMENT

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

Cases referred to:

1. *Finance Bank Zambia Limited & Another Vs Simataa Simataa - Appeal No. 11 of 2017 ZMSC 233;*
2. *Arnold Keith August Vs Electoral Commission and Others - CTT/9/99;*
3. *Galaunia Farms Limited Vs National Milling Corporation Limited (2004) Z.R. 1 (S.C.);*
4. *Masauso Zulu Vs Avondale Housing Project Limited (1982) Z.R. 172;*
5. *Godfery Shamanena Vs Anti-Corruption Commission 2024/HPEF/003;*

6. *Y.B. and F. Transport Limited Vs Supersonic Motors Limited* (2000) Z.R. 22;
7. *London Chatham and Dover Railway Co. Vs South Eastern Railway Co.* [1893] AC 429 to 437;
8. *Zambia National Holdings Limited and Another Vs The Attorney General - S.C.Z. Judgment No. 3 of 1994;*
9. *Rodwell Kasokopyo Musamba Vs M.M. Simpempa (T/A Electrical and Building Contractors)* (1978) Z.R. 174;
10. *Zambia Railways Limited Vs Pauline S. Mundia and Brian Sialumba - Appeal No. 90/2011 SCZ/8/105/2011;*
11. *The Attorney-General Vs D.G. Mpundu* (1984) Z.R. 6 (S.C.);
12. *Spectrum Corporation Services Limited Vs Lafarge Zambia Plc - Appeal No. 187 of 2023;*
13. *Mhango Vs Ngulube & Another* (1983) Z.R. 61 (S.C.);
14. *Savenda Management Services Vs Stanbic Bank Zambia Limited (Appeal No. 37 of 2017) 2018 Z.M.S.C. (13 March 2018);*
15. *Lewis Mosho Vs Matildah Phiri - 2010/HP/183;*
16. *Paul Chitengi Vs Attorney General, Jane Chitembwe and Standwell Lungu - 2017/HP/1552;*
17. *Stroms Bruks Aktie Bolag and Others Vs J. & P. Hutchison - UKHL 844 (04 August 1905); and*
18. *Justine Mbita Silumbwe Vs Barcalys Bank Zambia Limited - Appeal No. 90/2011, S.C.Z./8/05/2011.*

Legislation referred to:

1. *The Anti-Corruption Act No. 3 of 2012 of the Laws of Zambia; and*
2. *Law Reform (Miscellaneous Provisions) Act Chapter 74 of the Laws of Zambia.*

Other Works Referred To:

1. *Bryan A. Garner, Black's Law Dictionary, 8th Edition;*
2. *Winfred and Jolowicz on Tort, 17th Edition (London: Sweet & Maxwell, 2006); and*
3. *Matibini, Zambian Civil Procedure: Commentary and Cases Volume 2 2017 at page 1271.*

1. INTRODUCTION

1.1 The Plaintiff commenced this Matter by way of Writ of Summons and statement of Claim seeking the following reliefs:

- i. Damages for loss of use of money held in the restricted account in the sum of USD 215,000.00 for the period between 7th June, 2023, and 7th December, 2024;*
- ii. Damages for loss of business and profits;*
- iii. Damages for loss of amenities;*
- iv. Damages for emotional distress and anguish;*
- v. Damages for legal costs and other expenses incurred under, and costs associated to Cause No. 2024/HPEF/003;*
- vi. Damages for abuse of statutory powers and authority;*
- vii. Interest on sums;*
- viii. Costs of and incidental to these proceedings; and*
- ix. Any other relief the Court may deem fit.*

1.2 The Defendant denied the Plaintiff's claims in the Memorandum of Appearance and Defence filed on 21st August, 2024.

2. PLEADINGS

2.1 The Plaintiff filed a Writ of Summons with Statement of Claim on 7th August, 2024. The gist of the Statement of Claim is that the Plaintiff, Chief Nkana of the Lamba people of Lufwanyama District, is a Director and Shareholder in Bisma Investment Limited which owned a mining license No. 13811-HQ-GML. On 20th August, 2021, Bisma Investment Limited offered to sell the license to Pridegems

Mining Limited, a subsidiary of Grizzly Mining Limited, at a price of USD 5,000,000.00, but ultimately sold it for USD 3,000,000.00.

- 2.2 On 5th September, 2022, Pridegems Mining Limited, through its holding company Grizzly Mining Limited, paid the last instalment of USD 165,000.00 into the Plaintiff's Zambia National Commercial Bank (ZANACO) Account.
- 2.3 On 8th September, 2022, the Defendant caused to be issued a Restriction Notice on the Plaintiff's ZANACO Bank Account and served the said Notice on the Bank. When the 9 months initial life span of the Restriction Notice was about to expire as prescribed by law, the Plaintiff engaged the Defendant enquiring when he would be allowed to access his Account. The Defendant informed him that investigations were still ongoing regarding taxes paid on the transaction and to that effect, the Defendant informed the Plaintiff that a letter had been written to the Zambia Revenue Authority (ZRA) for a formal report on the tax compliance status of the transaction that Bisma Investment Limited and Pridegems Mining Limited concluded.
- 2.4 That to help assist the Defendant, the Plaintiff furnished the Defendant with the Tax Assessment Report and Property Transfer Tax Clearance Certificate issued by ZRA indicating that Bisma Investment Limited fully paid the necessary taxes on the transaction.
- 2.5 When the initial Restriction Notice expired on 7th June, 2023, the Plaintiff discovered that a fresh Restriction

Notice for a prescribed period of 6 months had been placed on his ZANACO Account by the Defendant. Upon enquiry, the Defendant stated that they were still awaiting the report from ZRA on tax compliance and that the Defendant could not act on the Tax Assessment and Property Transfer Tax Clearance Certificates the Plaintiff had availed them.

- 2.6 Two days before the expiry of the fresh Restriction Notice, the Defendant placed a Warrant of Seizure on the Plaintiff's Account.
- 2.7 On 31st January, 2024, the Plaintiff instituted an action under Cause No. 2024/HPEF/003 claiming, *inter alia*, that the fresh Restriction Notice imposed on the Plaintiff's Bank Account was illegal.
- 2.8 This Court in its Judgment dated 21st June, 2024, with respect to the failure by the Respondent to serve the fresh Restriction Notice on the Plaintiff stated as follows:

“In view of the foregoing, we find that the failure by the Respondent to serve the fresh Restriction Notice on the Appellant renders it null and void. Therefore, the Appellant's first issue fails.”

- 2.9 It is on account of this finding that the Plaintiff stated that he would aver at trial that he is entitled to damages for the violation of his right to access his property during the time that the invalid Restriction Notice was in place unlawfully.
- 2.10 The Plaintiff submitted that he would show at trial that the money to which he was entitled but was illegally denied to access is USD 215,000.00, and would aver that the Defendant is liable to pay the Plaintiff the sum of USD

215,000.00 as damages for illegally denying access and use of the said sums.

- 2.11 The Plaintiff stated that he would aver at trial that on account of the Defendant illegally denying him access to his money, he suffered loss of business and profits in his commercial farming endeavours in Lufwanyama.
- 2.12 The Plaintiff asserted that he would aver that arising from the illegal conduct of the Defendant, he could no longer afford essential basic necessities of life (amenities) such as requisite medical care given his advanced aged and a history of ill health.
- 2.13 That the Plaintiff further asserted that he would aver that the Defendant abused its statutory authority by refusing and/or neglecting to follow the laid down procedural imperatives for purposes of exercising such statutory powers.
- 2.14 Consequently, the Plaintiff seeks the reliefs as listed under paragraph 1.1 herein.
- 2.15 The Defendant filed a Memorandum of Appearance and Defence on 21st August, 2024, and in summary submitted that the said Restriction Notice was issued on ZANACO as they were the Bank in possession of the Plaintiff's funds which were under investigation.
- 2.16 The Defendant submitted that it would aver at trial that a Restriction Notice is an investigative tool which has an effect of maintaining the *status quo* of property under investigations. That it was therefore necessary to issue the

Restriction Notice in order to preserve the Plaintiff's funds held at ZANACO.

- 2.17 The Defendant submitted it would aver at trial that independent investigations needed to be carried out to confirm the tax compliance status of the transaction and the Defendant could not just rely on the documents availed by the Plaintiff.
- 2.18 The Defendant stated that it would aver at trial that a Warrant of Seizure is an investigative tool that serves a different purpose, unlike a Restriction Notice. It was contended that the Court also found that the decision by the Defendant to issue a Warrant of Seizure on the Plaintiff's Account was not done in bad faith, oppressive and in abuse of the Defendant's power and authority.
- 2.19 With regard to the Plaintiff's claims for damages, the Defendant submitted that it would put the Plaintiff to strict proof and that it is not liable to pay the Plaintiff the sum of USD 215,000.00 as damages for denying him access and use of these funds.
- 2.20 The Plaintiff filed a Reply on 28th October, 2024, and submitted that whilst not disputing that the Restriction Notice was issued on ZANACO as they are the Bank in possession of the Plaintiff's funds which were under investigations, the Plaintiff would aver that there were several engagements he had with the Defendant in a bid to resolve the matter; that it was during these engagements that the Plaintiff learnt that the Defendant had written to ZRA inquiring as to whether the transaction which yielded

the funds subject of the now Warrant of Seizure had the requisite taxes paid.

2.21 In reply to the Defendant's submission that independent investigations needed to be carried out to confirm the tax compliance status and that the Defendant could not just rely on the documents that were availed by the Plaintiff, the Plaintiff contests the truthfulness of these submissions and states that the reason for the continued deprivation of the Plaintiff's funds on account that it is still doing its independent investigations with ZRA is disingenuous. That it is not practically possible that the enquiry by the Defendant to ZRA, which was made in 2023, could still be awaiting a response. That this is especially that the enquiry in question only involves confirmation as to whether or not the taxes were paid on the transaction that yielded the funds that are subject of the Warrant of Seizure.

2.22 As regards the Defendant's decision to issue a Warrant of Seizure on the Plaintiff's Account not being done in bad faith, oppressive and in abuse of the Defendant's power and authority, the Plaintiff states that this constitutes an admission as to the finding of the Court with respect to the illegality of the Restriction Notice which was not served on the Plaintiff.

2.23 The Plaintiff states that to the extent that the Court held that the Defendant's Restriction Notice was illegal on account of its failure to serve the same on the Plaintiff, the

liability of the Defendant in damages for the injury arising from the said illegality cannot be disputed.

2.24 It was submitted that the Defendant's bare denials and its failure to rebut the allegations as claimed constitutes an admission.

2.25 Following the fulfilment of all statutory preparatory requirements, the Matter was set down for trial on 29th July, 2025.

3. PLAINTIFF'S CASE AT TRIAL

3.1 The Plaintiff fielded one witness, being the Plaintiff, **GODFERY SHAMANENA**, who testified in support of his claims in this Matter.

3.2 In his Witness Statement, "**P1**", the Plaintiff repeated what is contained in his Statement of Claim as given above from 1.1 to 1.14, and testified that the Bisma Investment Limited's offer letter to sell its mining license to Pridegems Mining Limited appears on page 1 of the Plaintiff's Bundle of Documents. That on 5th September, Pridegems Mining Limited, through its holding Company, Grizzly Mining Limited made its last instalment payment into the Plaintiff's Account held at ZANACO in the sum of USD 165,000.00 and proof of payment appears at pages 11 to 12 of the Plaintiff's Bundle of Documents.

3.3 The Plaintiff testified that the Restriction Notice on his Account served on ZANACO appears on page 13 of the Plaintiff's Bundle of Documents.

3.4 That the Tax Assessment Report and Property Transfer Tax Clearance Certificate he furnished the Defendant

indicating that Bisma Investment Limited fully paid the necessary taxes on the transaction appear on pages 16 to 18 of the Plaintiff's Bundle of Documents.

- 3.5 The Plaintiff testified to his shock upon discovering a fresh Restriction Notice on his Account at ZANACO, which Notice was not served on him and which appears at pages 22 to 23 of the Plaintiff's Bundle of Documents.
- 3.6 The Plaintiff testified that following this Court's Ruling dated 21st June, 2024, as quoted at 1.8 above, he is entitled to damages for the violation of his right to access his property during the time the invalid Restriction Notice existed to the tune of USD 215,000.00.
- 3.7 The Plaintiff testified that the particulars of his loss of business profits are that being a resident of Lufwanyama, farming on a commercial basis is his main stay. However, on account of the fact that the Defendant illegally denied him access to his money during the critical farming season between June, 2023, and December, 2023, the Plaintiff was unable to conduct his farming as he had no other viable sources of income to prepare his farms and acquire farming inputs. That the loss he suffered is attributed to the illegal conduct of the Defendant.
- 3.8 The Plaintiff testified that further arising from the Defendant's illegal conduct, he could no longer afford essential basic necessities of life (amenities) such as requisite medical care given that he is not only advanced in age, but also has an appreciable history of ill health.

3.9 The Plaintiff testified that the particulars of his loss of amenities are that:

- i. He was diagnosed, sometime in 2020, with severe ailments such as diabetical retinopathy, glomerulonephropathy, polyneuropathy of the extremities, hypertension, and encephalopathy;
- ii. He was put on medication and insulin injections to be taken every day, which condition required and still requires daily expenditure;
- iii. His condition deteriorated and he was recommended to seek specialised medical attention preferably in India or South Africa; and
- iv. Owing to a lack of resources as the Defendant herein had illegally held on to his resources, the Plaintiff could not afford his prescribed daily insulin, and more devastatingly, he could not afford the recommended specialised medical care abroad, leading to further deterioration of his health.

3.10 The medical reports attesting to the Plaintiff's ill-health appear on pages 19 to 23 of his Bundle of Documents, entered into evidence as "**P2**".

3.11 The Plaintiff stated that in view of the foregoing, he prayed that this Honourable Court grants him all the reliefs claimed in his Writ of Summons and Statement of Claim.

3.12 In cross examination, the Plaintiff confirmed that he was the proprietor of Bisma Mining Limited and that the Company offered to sell its mining license to Pridegems

Mining Limited, as shown by a letter of offer at page 1 of the Plaintiff's Bundle of Documents.

- 3.13 Further, that the said license was sold for USD 3,000,000.00, as evidenced by a Contract of Sale at pages 2 to 10 of the Plaintiff's Bundle of Documents, and that the USD 165,000.00, paid into his Account was part payment made towards the selling price of the license. Proof of the said payment appears at pages 11 to 12 of the Plaintiff's Bundle of Documents.
- 3.14 The Plaintiff submitted that he was aware that a Restriction Notice, at page 13 of the Plaintiff's Bundle of Documents, and Warrant of Seizure were investigative tools but contended that he was not served the Restriction Notice by the Defendant. He submitted that he has not received any communication from the Defendant that the investigations have been concluded.
- 3.15 The Plaintiff submitted that he does receive a salary by virtue of being a Chief and that he has access to the medical scheme under the National Health Insurance Management Authority ("NHIMA").
- 3.16 The Plaintiff testified that due to limited time, he had not brought any documentation to show the profitability of his businesses prior to the Restriction Notice being placed on his Account.
- 3.17 When Counsel for the Defendant referred to offences the Plaintiff was being investigated for, the Plaintiff expressed ignorance of the same and was referred to the Defendant's Bundle of Documents at page 2. Counsel read that the

Plaintiff was being investigated for not only offences related to taxes, but also other offences such as possession of property reasonably suspected to be proceeds of crime to which the Plaintiff expressed ignorance.

3.18 When asked if it was not necessary for the Defendant to make their own independent verification with ZRA on the status of the tax compliance, the Plaintiff responded that it was the Defendant's duty to do so.

3.19 The Plaintiff submitted that he had no documentary proof to show that his safety was compromised since the issuance of the Restriction Notice.

3.20 When it was put to the Plaintiff that following a Judgment under Cause No. 2025/HN/150 the Seizure Notice placed on his Account with ZANACO was lifted, the Plaintiff in acknowledging this, expressed his thanks to the Courts for looking into the issue where the suspension was lifted.

3.21 There was no re-examination and Counsel for the Plaintiff closed his case.

4. DEFENDANT'S CASE AT TRIAL

4.1 The Defendant called one witness, **MILIMO NG'ANDU**, a Manager Investigations at Indo Zambia Bank, who previously served as a Senior Investigations Officer at the Anti-Corruption Commission from 2022 to March, 2025.

4.2 The Witness entered into evidence Defendant's Bundle of Documents, "**D1**", dated 11th February, 2025, and his Witness Statement, dated 26th March, 2025, entered into evidence as "**D2**".

- 4.3 In his Witness Statement, the Defendant's witness testified that the Defendant received two complaints dated 25th July, 2022, and 8th September, 2022, respectively, alleging, *inter alia*, that on a date unknown between 1st January, 2022, and 30th September, 2022, the Plaintiff was in possession of funds suspected to be proceeds of crime. The Witness referred the Court to the Complaints at pages 1 to 3 in the Defendant's Bundle of Documents.
- 4.4 The Witness testified that the Defendant established through the Complaints that the Plaintiff was allegedly involved in illicit activities of money laundering and being in possession of property suspected to be proceeds of crime, and instituted investigations against the Plaintiff with respect to the allegations as well as in respect to the funds that were held in the Plaintiff's Bank Account held at ZANACO.
- 4.5 That the Defendant, through its investigations, established that the Plaintiff had been receiving funds suspected of being proceeds of crime from Grizzly Mining Limited in the period between 20th January, 2022, and 8th September, 2022, which funds are alleged to have been a payment towards the sale of Bisma Mining Limited in which the Plaintiff was the proprietor.
- 4.6 The Witness testified that on 8th September, 2022, the Defendant issued a Restriction Notice on the Plaintiff's Dollar Account held at ZANACO Industrial Branch, Kitwe, under Account No. 0501411200235, which Restriction Notice was duly served on the Bank. The Witness referred

the Court to the Restriction Notice at pages 4 and 5 of the Defendant's Bundle of Documents.

4.7 The Witness testified that the Restriction Notice of 8th September, 2022, expired on 7th June, 2023, and the Defendant extended it for another six (6) months as provided by law until it expired on 6th December, 2023. That in order to effectively continue investigations into the allegations, the Defendant further issued a Warrant of Seizure on the Plaintiff's Dollar Account. That a Warrant of Seizure, being an investigative tool, can be issued in the course of investigations and goes beyond the effects of a Restriction Notice. The Witness referred the Court to the Warrant of Seizure at pages 8 to 10 of the Defendant's Bundle of Documents.

4.8 The Witness submitted that the Defendant wrote to ZRA requesting for all relevant documents relating to tax compliance as a result of the sale of Bisma Mining Limited, that however, the Defendant has not received any response yet from ZRA which response is necessary to corroborate any documents availed by the Plaintiff to the Defendant. The Defendant's letter to ZRA is at pages 6 to 7 of the Defendant's Bundle of Documents.

4.9 The Witness testified that the ongoing investigations against the Plaintiff are not only limited to the payment of the Property Transfer Tax from the sale transaction, but also extends to possible money laundering and the manner in which the Plaintiff received funds from Grizzly Mining Limited as part payment for the sale of a small-scale

mining license from Bisma Mining Limited to Pridegems Mining Limited, which is a subsidiary of Grizzly Mining Limited.

- 4.10 In cross examination, when asked if he was aware of this Court's Judgment dated 26th June, 2024, under Cause No. 2024/HPEF/003, wherein this Court found that the Defendant's fresh Restriction Notice placed on the Plaintiff's Account was null and void, the Witness testified that he was not aware of the referenced case and that such a finding was within the Court's preserve.
- 4.11 When asked if it is not true that the failure of the Defendant to serve on the Plaintiff a fresh Restriction Notice as per the finding of this Court, was a violation of the Plaintiff's right to property, the Witness submitted that he did not know.
- 4.12 With regard to the Property Transfer Tax, the Witness submitted that the letter to ZRA dated 7th June, 2023, was to seek information on tax compliance status of Bisma Investment Limited and that at the time he left the employ of the Defendant, at the end of March, 2025, they had not yet received a response.
- 4.13 The Witness disagreed that a period of 18 months from the time the letter was sent up until he left the Defendant's employ was not a very long period of time and that he did make in person follow-ups with ZRA concerning the said letter, and that there were no records of the same follow-up made.

4.14 The Witness maintained that the lack of records showing the follow-ups made to ZRA, and his failure to conclude the investigations that were on going for over one year six months, did not characterise his investigations as incompetent.

4.15 There was no re-examination and the Defendant concluded its case.

5. THE PLAINTIFF'S SUBMISSIONS

5.1 The Plaintiff filed its Submissions on 12th August, 2025, and begun by largely rehashing what is contained in the Pleadings and evidence which we have taken note of but will not repeat here.

5.2 Counsel for the Plaintiff went on to submit that what this Court is faced with is the question of whether, following its holding under Cause No. 2024/HPEF/003 that the Restriction Notice placed on the Plaintiff's Bank Account was null and void for want of service, the Plaintiff should be entitled to damages. Counsel submitted that his response to this legal question is in the affirmative.

5.3 Counsel was fortified by the Supreme Court in the case of **Finance Bank Zambia Limited & Another Vs Simataa** ⁽¹⁾, wherein the Court stated as follows:

“It is important to recollect the principle of the law that where there is a right, there is a remedy. A right would be of little value if there was no remedy available in the event of its infringement.”

5.4 Further, that the South African case of **Arnold Keith August Vs Electoral Commission and Others** ⁽²⁾ also

echoed the same principle that where a violation of one's right occurs, there must be a remedy to redress the said violation.

- 5.5 Counsel submitted that it is not in dispute that the Defendant herein placed a Restriction Notice on the Plaintiff's Bank Account, which Notice was not served contrary to the requirement of the **Anti-Corruption Act No 3 of 2012**. That it is also common cause that this Court pronounced itself on the effect of the failure by the Defendant to serve the said Restriction Notice on the Plaintiff to the effect that the said Notice was null and void. That it is also an agreed fact that the Account which the Defendant restricted contained the sum USD 215,000.00, whose access was denied, and illegally so, by the Defendant.
- 5.6 Counsel contended that the above scenario, and bearing in mind the Supreme Court's Judgment in the case of **Finance Bank Zambia Limited & Another Vs Simataa** ⁽¹⁾, cited above, it becomes self-evident that the Plaintiff had the right to access his funds that sat in his Account and that the said right was infringed upon when the Defendant illegally placed a Restriction Notice on the said Account. That on account of that violation of that right and/or entitlement to his Bank Account, the Plaintiff is entitled to a remedy as reparation for the violation of his right.
- 5.7 In conclusion, Counsel for the Plaintiff submitted that on the basis of the above, the Plaintiff is entitled to damages as it is manifestly clear that the Defendant violated his

right to access and use his funds as he willed when the Defendant illegally prevented him to do so. That on the strength of the Pleadings, evidence and the law, it was prayed that the Plaintiff be awarded all the reliefs as sought, with costs.

6. THE DEFENDANT'S FINAL SUBMISSIONS

- 6.1 The Defendant filed its Submission on 20th August, 2025, and begun by giving a background to this Matter as contained in the Pleadings above, which we shall not repeat here.
- 6.2 Counsel for the Defendant submitted that the burden of proof of any claim squarely falls on the party making a claim, as was the position in the Supreme Court case of **Galaunia Farms Limited Vs National Milling Corporation Limited** ⁽³⁾, and that he who alleges must prove his case on a balance of probabilities as was held by the Supreme Court in the case of **Masauso Zulu Vs Avondale Housing Project Limited** ⁽⁴⁾.
- 6.3 Counsel submitted that by virtue of **Section 61** of the **Anti-Corruption Act No. 3 of 2012**, the Defendant is allowed to restrict the disposal of property which is in the possession of a third party as was the case in *casu*, and that the two Restriction Notices issued on the said Account held at ZANACO Bank dated 8th September, 2022, and 7th June, 2022, were done in accordance with and within the confines of the said Section.
- 6.4 Counsel submitted that when the two Restriction Notices expired, the Defendant issued a Warrant of Seizure of the

Plaintiff's Account on 15th November, 2023, owing to the fact that investigations against the Plaintiff were still ongoing during the period in question.

- 6.5 That the said Warrant of Seizure was challenged by the Plaintiff in the case of **Godfery Shamanena Vs Anti-Corruption Commission** ⁽⁵⁾ on the grounds of arbitrariness and abuse of power and further that the failure to serve a fresh Restriction Notice by the Respondent (Defendant) on the Applicant (Plaintiff) following the expiration of the initial Restriction Notice's life span of nine (9) months denied the Plaintiff access to his Account and that it was illegal among others.
- 6.6 Counsel submitted that this Court's findings at J49 of the Judgment were as follows:

“6.1 In view of the foregoing, we find that the failure by the Respondent to serve a fresh Restriction Notice on the Applicant renders it null and void. Therefore, the Applicant's first issue raised succeeds.

6.2 We find that the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account was not done in bad faith, oppressive and an abuse of the Respondent's power and authority. Therefore, the Applicant's second issue raised fails.”

- 6.7 Counsel submitted that it is on account of this Court's findings above that the Plaintiff alleges that he is entitled to the sum of USD 215,000.00 as damages for loss of use

of money held in his Account. It was Counsel's contention that the Plaintiff is not entitled to payment in the said sum as damages. That as this Court found in clause 6.2 at page J49 of the Judgment, the Warrant of Seizure that was placed on the Plaintiff's Account was not done in bad faith, neither was it oppressive nor an abuse of the Respondent's power and authority.

- 6.8 It was contended that it was within the Defendant's right to restrict the Plaintiff's Account using the Restriction Notices and Warrant of Seizure, being investigative tools, in order to preserve the Property under investigations. That at no time did the Defendant discontinue investigations against the Plaintiff, as was admitted by the Plaintiff during cross examination.
- 6.9 Counsel contended that the Plaintiff's allegations that he lost out on business and profits have not been supported by evidence in the form of business assessment reports, neither did he call any witness to show the profitability of his business before the period his Account was restricted and during the period of restriction, to show that he did indeed suffer any business loss as alleged.
- 6.10 Counsel contended that the loss of business is a matter of strict proof and it is therefore not sufficient for the Plaintiff to merely allege loss of business and profits by virtue of the fact that he resides in Lufwanyama District where he is Chief.
- 6.11 Counsel submitted that the Plaintiff also claimed loss of amenities and that he could not afford basic necessities

such as medical care, but he however, testified that he has medical schemes such as NHIMA which he has access to as well as a salary earned by virtue of his position as Chief Nkana of the Lamba people in Lufwanyama District.

6.12 Counsel submitted that other than the tax compliance issues, the Complaints at pages 1 to 3 of the Defendant's Bundle of Documents will show that there are other offences for which the Plaintiff was being investigated for other than Tax offences.

6.13 That the submission of Tax Compliance Assessment Reports to the Defendant was not sufficient to lift the restriction placed on the Plaintiff's Account, more so as there was still the need for independent verification to be conducted by the Defendant from ZRA which the Plaintiff rightly acknowledged during cross examination.

6.14 It was contended that the Plaintiff's claim of emotional distress has equally not been substantiated as there is no evidence on Record before this Court to prove the said allegations that the Plaintiff indeed suffered emotional distress.

6.15 Counsel submitted that the general rule is that a claim for emotional distress and anguish must be premised upon a breach of duty owed directly to the Plaintiff by the Defendant which should actually endanger the Plaintiff's safety and cause him to fear for his safety.

6.16 Counsel defined 'mental anguish' as per **Black's Law Dictionary**, 8th Edition as:

“A highly unpleasant mental reaction such as anguish, grief, fright, humiliation, of fury that results from another person’s conduct; emotional pain and suffering.”

6.17 Counsel submitted that in a claim for damages for nervous shock and mental anguish, which is so severe that no reasonable man could be expected to endure it, the Plaintiff must satisfy the following requirements:

- i. It must have been caused by an act or omission;*
- ii. It must be by reason of actual apprehended injury to the Plaintiff and that the Defendant owed the Plaintiff a duty of care not to cause him reasonably foreseeable injury.*

6.18 Counsel contended that in *casu*, no duty was breached by the Defendant when it restricted the Plaintiff’s Account following the allegations against the Plaintiff being involved in illicit activities, as investigations into the said allegations against the Plaintiff are still ongoing.

6.19 Counsel submitted that the Plaintiff’s claims for the costs under Cause No. 2024/HPEF/003 are denied as the Court in its Judgment at page J49 Ordered each Party to bear their own costs. It was Counsel’s submission that the liability of a client to pay costs to their Advocate shifts to the party liable to pay costs when the judgment is delivered with costs and referred the Court to the finding in the case of **Y.B. and F. Transport Limited Vs Supersonic Motors Limited** ⁽⁶⁾.

6.20 It was Counsel's further contention that costs are awarded at the discretion of the Court and there is no way the Plaintiff can be entitled to costs which were specifically prayed for and not granted. That costs are the preserve of the Court. Therefore, the Plaintiff's claim for damages for costs and expenses incurred cannot be substantiated.

6.21 Counsel submitted that the Plaintiff is further seeking damages for abuse of statutory power and authority, misfeasance in public office, and referred the Court to the learned authors of **Winfred and Jolowicz on Tort, 17th Edition** wherein it was stated at pages 358 to 360 that:

“The purpose of the tort of misfeasance in public office is to give compensation to those who have suffered loss as a result of improper abuse of public power, it being based on the principle that such power may be exercised only for the public good and not for ulterior and improper purposes. It applies to an unlawful (that is to say, unauthorised) act by a person holding a public office (which includes a public body such as a local authority, a government department or the Bank of England) provided it is done with the requisite mental element...The mental element relates both to the validity of the act and its effects upon the claimant. As to the first, the officer must act in bad faith, that is to say he must either be aware that his act is unlawful or be consciously indifferent as to its lawfulness – negligence is not enough. As to

the effect on the claimant, there are two situations. The first is what is called ‘targeted malice’, that is to say, the case where the defendant acts with the purpose of causing harm to the claimant... Alternatively, the defendant will be liable if he is aware that his act will probably (or in the ordinary course of things) cause damage of the type in fact suffered by the claimant or he is consciously indifferent to that risk.”

6.22 Counsel submitted that for the Plaintiff to be successful under this claim, he must demonstrate that he has suffered loss as a result of the improper abuse of public power by the Director-General or any other officer of the Defendant; he must also show that the Director-General exercised the power to issue the Restriction Notice for ulterior and improper purposes; and that the Director-General acted maliciously in issuing the said Restriction Notice or in the conduct of investigations against the Plaintiff for offences he allegedly committed.

6.23 Counsel argued that the Plaintiff has not adduced any evidence to show that the Director-General acted with malice when exercising the power to issue the Restriction Notice, neither has he also shown that the exercise of the power was done in bad faith.

6.24 On the Plaintiff’s claim for costs, Counsel referred the Court to **Matibini, Zambian Civil Procedure: Commentary and Cases**, Volume 2, 2017 at page 1271, and submitted that the underlying principle and the basis

for an award of interest, is that the Defendant has kept the Plaintiff out of his money, so he ought to compensate the Plaintiff.

6.25 Counsel additionally relied on the English case of **London Chatham and Dover Railway Co. Vs South Eastern Railway Co.** ⁽⁷⁾, where the Judge reasoned as follows:

“I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use. Therefore, if I could see my way to do so, I should certainly be disposed to give the appellant or anybody in a similar position interest upon the amount withheld from the time of action brought at all events.”

6.26 Counsel submitted that understandably, the award of interest is at the Court’s discretion in accordance with **Section 4** of the **Law Reform (Miscellaneous Provisions) Act Chapter 74** of the **Laws of Zambia**. Counsel submitted that as was shown at trial, the Defendant has a legal basis to restrict the use of the Plaintiff’s Account. That the Plaintiff is therefore not justified to payment of interest under the **Act** at such rate as it thinks fit on the whole or any part, or damages for the whole or any part.

6.27 It was contended that similarly, the Plaintiff is not entitled to any costs. That however, should the Plaintiff's case be successful, the Supreme Court in the case of **Zambia National Holdings Limited and Another Vs The Attorney General** ⁽⁸⁾ held that the general rule is that costs should follow the event. Further and in the case of **Rodwell Kasokopyo Musamba Vs M.M. Simpempa (T/A Electrical and Building Contractors)** ⁽⁹⁾, it was held that a successful party should not be deprived of his costs or at any rate made to pay costs for the other party. Counsel contended that the same should therefore only be awarded if the Plaintiff is successful in his claims.

7. ISSUES NOT IN DISPUTE

7.1 The following issues are not in dispute:

1. That there was a Contract of Sale of a mining license between Bisma Investment Limited and Pridegems Mining Limited, a subsidiary of Grizzly Mining Limited;
2. That on 5th September, 2022, Pridegems Mining Limited, through Grizzly Mining Limited, made the last instalment payment of UD\$ 165,000.00 into the Plaintiff's Dollar Account Number 0501411200235 held at ZANACO;
3. That the Defendant herein, on 8th September, 2022, caused to be issued a Restriction Notice to facilitate investigations on the said Account and served ZANACO;

4. That following the expiration of the said Restriction Notice on 7th June, 2023, the Defendant issued a fresh Restriction Notice valid for six (6) months on the Plaintiff's Account and did not serve the Plaintiff the said fresh Restriction Notice;
5. Upon expiry of the fresh Restriction Notice on 6th December, 2023, the Defendant issued a Warrant of Seizure on the Plaintiff's Account to facilitate investigations;
6. Following a suit instituted by the Plaintiff against the Defendant under Cause No. 2024/HPEF/003, this Court, in a Judgment dated 21st June, 2024, found that the fresh Restriction Notice issued on 7th June, 2023, was null and void for failure by the Defendant to serve the said fresh Restriction Notice on the Plaintiff as prescribed by law under **Section 61(2)** of the **Anti-Corruption Act No. 3 of 2012**; and
7. Following a Judgment under Cause No. 2025/HN/150, the Warrant of Seizure placed on the Plaintiff's Account with ZANACO has since been lifted.

8. ISSUES FOR DETERMINATION

8.1 Having perused the Record, we find that the following is the issue for determination:

- i. Whether the Plaintiff is entitled to the damages claimed from the Defendant for the period 7th June, 2023, to 6th December, 2023, in light of the holding by this Court under Cause No. 2024/HPEF/003, that the*

failure by the Defendant to serve the Plaintiff the fresh Restriction Notice rendered it null and void.

9. ANALYSIS AND DECISION OF THE COURT

- 9.1 We have carefully considered the Pleadings in this case as well as the Witness Statements and Bundles of Documents admitted into evidence. We have also analysed the evidence from cross-examination of the Witnesses and finally, perused the submissions filed in by Counsel for the Plaintiff and Defendant.
- 9.2 The Plaintiff submitted that he would aver at trial that he is entitled to damages for the violation of his right to access his property during the time the invalid fresh Restriction Notice was in place unlawfully.
- 9.3 Whilst the Defendant failed to respond to the Plaintiff's claims for violation of his right to access his property during the period 7th June, 2023 to 7th December, 2023, they have stated that with regard to the Plaintiff's claims for damages, the Defendant would put the Plaintiff to strict proof and that it is not liable to pay the Plaintiff the sum of USD 215,000.00.
- 9.4 Having identified the sole issue to determine above, we shall proceed to consider the reliefs claimed by the Plaintiff as presented in the Writ of Summons and Statement of Claim at paragraph 1.1 above, and the evidence tendered in support of each relief claimed.
- 9.5 It is trite that he who alleges must prove. The principle of "*he who alleges must prove*" establishes that a party that makes an assertion in a legal context has the burden to

provide evidence supporting their claim. If the party fails to prove their allegations, they risk losing their case. This is a fundamental principle in both civil and criminal litigation, and emphasises that allegations by themselves are insufficient without some level of substantiation. In criminal matters this is beyond all reasonable doubt, and in civil cases as in *casu*, it is on a balance of probabilities. In essence, the burden of proof lies with the party asserting the fact, as outlined in various legal frameworks.

9.6 In the Supreme Court case of **Zambia Railways Limited Vs Pauline S. Mundia and Brian Sialumba**⁽¹⁰⁾, it was stated that:

“The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable.”

9.7 Therefore, in order for the Plaintiff to succeed, it is his duty to prove his claims for damages against the Defendant on a balance of probability.

9.8 It has long been established that damages fall into two categories, that is general, which are non-quantifiable, or special damages, which are quantifiable. In the Supreme Court case of **The Attorney General Vs D.G. Mpundu**⁽¹¹⁾, the Court stated that:

“In other words, usual, ordinary or general damages may be generally pleaded; whereas unusual or special damages may not, as these must be specifically pleaded in a statement of claim (or

where necessary, in a counterclaim) and must be proved.”

9.9 Perusal of the Plaintiff’s Writ of Summons and Statement of Claim shows that the damages claimed for have been listed from (i) to (vi) and have not be categorised as being general damages or unusual or special damages as guided above. Categorising damages in a Writ of Summons or Statement of Claim is essential for clarity, legal sufficiency, and guiding the Court on the relief sought.

9.10 The Plaintiff in (i), has claimed for ‘*Damages for loss of use of the money held in the restricted account in the sum of USD215,000.00 for the period between 7th June, 2023, and 7th December, 2023*’; in (ii) ‘*Damages for loss of business*’; and in (iii) ‘*Damages for loss of amenities*’. It is our considered view, that these claims fall under the category of special damages.

9.11 We refer to the Court of Appeal case of **Spectrum Corporation Services Limited Vs Lafarge Zambia Plc** ⁽¹²⁾ wherein a claim for loss of use of money was considered as follows at J49:

“The claim for loss of use of money constitutes special damages, and to succeed, must be specifically pleaded and substantiated with evidence.”

9.12 The Court of Appeal in the above case referred to and quoted the holding from the Supreme Court case of **Mhango Vs Ngulube & Another** ⁽¹³⁾ that:

“It is, of course, for any party claiming a special loss to prove that loss and to do so with evidence which makes it possible for the court to determine the value of that loss with a fair amount of certainty. As a general rule, therefore, any shortcomings in the proof of a special loss should react against the claimant.”

9.13 The Court of Appeal then went on to state that:

“In casu, there was no evidence submitted by the appellant detailing the loss of use of money. In the absence of evidence to ascertain the claim for loss of use of money, the appellant is essentially requesting this Court to grant a relief that is not supported by any evidence. The learned authors of McGregor on Damages at paragraph 45-001 opine that:

‘The claimant has the burden of proving both the fact and the amount of damage before he can recover substantial damages. This follows from the general rule that the burden of proving a fact is upon him who alleges it and not upon him who denies it, so that where a given allegation forms an essential part of a person's case the proof of such allegation falls on him....

Where he succeeds in proving neither fact nor amount of damage, he loses the action or if a right is infringed, recovers only nominal damages. Where

he succeeds in proving the fact of damage but not its amount, this generally permits only an award of nominal damages'

The appellant having failed to prove that it suffered damages for loss of use of money, is not entitled to the sought relief of damages. It is not enough for the appellant to merely claim damages, evidence of loss or injury must be adduced, more is expected."

- 9.14 This holding establishes that special damages must be both specifically pleaded and strictly proved. It is not sufficient for a party merely to allege a special loss; credible evidence must be led to enable the Court assess the loss with reasonable certainty. Any deficiency in proof, as the Court of Appeal, and indeed the Supreme Court observed, operates to the detriment of the claimant.
- 9.15 Whilst the cited case above dealt with the claim for special damages for loss of use of money, the finding by the Court of Appeal applies to all special damages, which include the damages claimed by the Plaintiff not only at (i), but also at (ii), and (iii) in the Plaintiff's Writ of Summons.
- 9.16 Perusal of the Plaintiff's Pleadings and testimony before this Court do not particularise the special damages nor have they been substantiated with evidence to prove the claims on a balance of probability.
- 9.17 The Plaintiff at (i), has claimed for loss of use of USD 215,000.00 being money in his restricted Bank Account. In

the Statement of Claim, the Plaintiff submits that he is entitled to the said sum which he was illegally denied access to, and that the Defendant is liable to pay him USD 215,000.00. The Plaintiff has failed to particularise what this money was to be used for and has failed to quantify any loss or injury he has suffered as a result of not accessing this sum during the period in question let alone adduced any evidence in support of the claim.

- 9.18 The Plaintiff, at (ii) of the Writ, has claimed for '*Damages for loss of business and profits*' and has stated that being a resident of Lufwanyama, his main stay is commercial farming. That on account of being denied access to his money held in the Bank Account during the critical farming season between June, 2023, and December, 2023, he was unable to conduct his farming activities as he had no other viable sources of income to prepare his farms and acquire farming inputs. The Plaintiff attributes the loss of business and farming to the illegal conduct of the Defendant.
- 9.19 The Plaintiff has failed to adduce evidence to show that he is indeed a commercial farmer and what crops he grows during the period in question. There has been no proof adduced of the amounts he normally makes during the said period and lost between June and December, 2023. The Plaintiff's Pleadings, including his Bundle of Documents are bereft of such evidence, which in the normal course of being a commercial farmer he would have produced to substantiate his claims of loss of business during the said period as such information is within his peculiar knowledge.

- 9.20 The Plaintiff, during cross examination, testified that due to limited time, he did not bring any documentation to show the profitability of his businesses prior to the Restriction Notice being placed on his Account.
- 9.21 In the Supreme Court case of **Savenda Management Services Vs Stanbic Bank Zambia Limited** ⁽¹⁴⁾ the Court found as follows with regard to special damages:

“What this means is, a claim for special damages must be specifically pleaded and particularised. A perusal of the originating process filed in this matter, being the writ of summons and statement of claim, reveal that they are both bereft of such particulars. In relation to the claim for ZMW192,500,000.00 both processes merely state ‘K192,500,000.00 damages for loss of business.’

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

- 9.22 In our considered view, and based on the evidence before us, there was no evidence submitted by the Plaintiff detailing the

loss of use of money and the loss of business and profits. In the absence of evidence to ascertain the claim for loss of use of money and loss of business profits, the Plaintiff is essentially requesting this Court to grant a relief that is not supported by any evidence.

- 9.23 Consequently, this claim at *(ii)* also fails.
- 9.24 In *(iii)*, the Plaintiff has claimed for loss of amenities arising from the illegal conduct of the Defendant and stated that he could no longer afford essential basic necessities such as medical care given that he is advanced in age and has a history of ill health.
- 9.25 In his Bundles of Documents, the Plaintiff at Page 19 has submitted a Medical Report from Progress Medical Center, dated February, 2023, stating his recurrent illnesses and the treatment he receives. The Report states that his condition begun to deteriorate the year before and he was advised to have treatment in specialised hospitals abroad, specifically, India and South Africa.
- 9.26 At page 20 is an MRI Report of the Plaintiff's brain scan from Sinozam Friendship Hospital, dated 3rd February, 2022.
- 9.27 At page 21 is a Medical Report from Sinozam Friendship Hospital, dated 3rd February, 2022, which documents the Plaintiff's illness based on an examination done on 25th December, 2019. The Report further refers to the MRI brain scan above and the results of the same.
- 9.28 Having perused the said Reports, there not having been an expert witness such as a medical doctor called as a witness for the Plaintiff, we will not assume to decipher the

conditions listed and mentioned therein. Of note and what is an essential requirement for the claim of special damages for amenities, is the need for a party to quantify the same. The Medical Reports in the Plaintiff's Bundle of Documents are devoid of such quantifications. Medical expenses must be pleaded with particularity and each item and amount must be listed and proved.

9.29 The Plaintiff during cross examination submitted that he does receive a salary by virtue of being a Chief and that he has access to the medical scheme under the National Health Insurance Management Authority, NHIMA. Despite this, the Plaintiff has failed to particularise the loss he has suffered during the period in question with regards his claim for damages for loss of amenities which exceeds his pay and access to medical insurance. The expectation would have been a list of medical expenses including a breakdown of costs for each procedure and medicines bought outside of NHIMA and beyond his earnings, and the documentary proof of the same being receipts and invoices

9.30 We have taken into consideration that the Medical Reports outlining the Plaintiff's ailments, medical procedures and the need for him to travel abroad for medical treatment, were not directly or indirectly caused by the Defendant and predate the issuance of the fresh Restriction Notice.

9.31 We reiterate that claims for special damages such as medical amenities must be specifically pleaded and strictly proved. General allegations without supporting documentations is insufficient. Medical expenses must be itemised and

supported by evidence such as hospital bills or receipts to be recoverable and incurred during the period in question.

9.32 The Plaintiff's claim as stated at (iii) in the Writ of Summons fails.

9.33 The Plaintiff's claim at (iv) is for '*Damages for emotional distress and anguish*'. Damages such as these fall under the category of general damages and are non-quantifiable losses. The Plaintiff must prove that the Defendant's conduct, of restricting his Bank Account, caused significant psychological harm.

9.34 The Defendant's contention is that the Plaintiff's claim of emotional distress has not been substantiated as there is no evidence on Record before this Court to prove the said allegations that the Plaintiff indeed suffered emotional distress. Further that no duty was breached by the Defendant when it restricted the Plaintiff's Account following the allegations against the Plaintiff being involved in illicit activities, as investigations into the said allegations against the Plaintiff are still ongoing.

9.35 In the High Court case of **Lewis Mosho Vs Matildah Phiri** ⁽¹⁵⁾, the Plaintiff sued for damages for nervous shock, mental anguish, and loss of public image. The Court acknowledged that emotional distress can be compensable, especially where the conduct was malicious or deceptive. Therefore, emotional harm must be pleaded with supporting facts, and damages may be awarded if the distress is a foreseeable consequence of the Defendant's actions. This was equally the finding of the High Court in the case of **Paul Chitengi Vs**

Attorney General, Jane Chitembwe and Standwell Lungu
(16).

1. In the English case of **Stroms Bruks Aktie Bolag and Others Vs J. & P. Hutchison** ⁽¹⁷⁾ it was stated that:

“General damages...are such that the law will presume to be direct, natural, or probable consequences of the action complained of.”

9.36 There is no dispute that the Defendant did issue a fresh Restriction Notice on the Plaintiff’s Bank Account for the period between 7th June, 2023, and 7th December, 2023, without due regard to the provisions of **Section 61(2)** of the **Anti-Corruption Act No. 3 of 2012** which clearly stipulates a mandatory requirement that the said Restriction Notice must be served on the Plaintiff. Hence, the finding in our Judgement dated 21st June, 2024, that the said Restriction Notice is null and void for want of service.

9.37 This was an omission on the Defendant’s part and an infraction of the Plaintiff’s legal right. However, the Plaintiff has failed to prove that he suffered actual damage and loss for emotional distress and anguish as required.

9.38 It is our considered view that consequently, the Plaintiff’s claim at (iv) of the Writ of Summons for emotional distress and anguish fails for want of proof.

9.39 The Plaintiff, under (v), claims for ‘*Damages for legal costs and other expenses and costs associated with Cause No. 2024/HPEF/003*’. It is our considered view that this is an unfounded claim and we fail to find its relevance in *casu*. Costs were already determined under Cause No.

2024/HPEF/003 wherein the Court stated that each Party was to bear its own costs, thereby rendering this Court *functus officio* and barred from revisiting the said award. This claim therefore fails.

9.40 The Plaintiff, under *(vi)*, has claimed damages for abuse of statutory powers and authority by the Defendant by it refusing and/or neglecting to follow the laid down procedural imperatives for purposes of exercising such statutory powers.

9.41 In response, the Defendant, properly referring to this claim for damages as misfeasance of public office, submitted that the Plaintiff must demonstrate the loss suffered; he must show that the Director-General exercised the power to issue the Restriction Notice for ulterior and improper purposes; and that the Director-General acted maliciously in issuing the said Restriction Notice or in the conduct of investigations against the Plaintiff for offences he allegedly committed.

9.42 The Director-General, under **Section 11** of the **Anti-Corruption Act No. 3 of 2012** is empowered and authorised to act as follows:

“1) The Director-General may, for the performance of the Commission’s functions under this Act—

(a) authorise, in writing, any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require the head, of any public body, to produce or furnish within such time as may be specified by the Director-General, any document or a certified true copy of any document which is in that person's possession or under that person's control and which the Director-General considers necessary for the conduct of an investigation into alleged or suspected offences under this Act:"

- 9.43 Under **Sections 60(1)** and **61(1)**, the Director-General has the power to restrict the disposal of property by either issuing Restriction Notices, each with a duration of nine (9) months, on a person subject of an investigation, or a third party holding any property, including money in a bank account for, or on behalf of, or to the order of a person who is under investigation, respectively.
- 9.44 Restriction Notices served under **Sections 60(1)** and **61(1)** of **the Act**, may be re-issued, in *casu* referred to as fresh Restriction Notice, for a further period of 6 months to facilitate the conclusion of an investigation.
- 9.45 Under **Section 58** of **the Act**, an Officer of the Anti-Corruption Commission is authorised to seize moveable and immovable property reasonably suspected to have been acquired from corrupt practices, is the subject of an offence, or is evidence relating to an offence. **Section 59** guides that such a seizure effectively removes the property from the custody and control of one person and places it

in the custody of a person or authority, such as the Director-General.

9.46 Based on the above provisions of the law, the Director General and his Officers are permitted to investigate, demand documentation from any head of a public body, including ZRA, issue Restriction Notices on a person being investigated and a third party holding such persons property, and issue Warrants of Seizure to obtain control and custody over movable or immovable property the subject of an offence or evidence relating to an offence.

9.47 For misfeasance of public office to be proved, the Plaintiff must particularise in the Pleadings and submit evidence and demonstrate that he has suffered loss as a result of the improper abuse of public power by the Director-General and his officers. The Plaintiff must also show that the Director-General exercised the power to issue the fresh Restriction Notice for ulterior and improper purposes and that the Director-General acted maliciously in issuing the said fresh Restriction Notice or in the conduct of investigations against the Plaintiff for offences he allegedly committed and was being investigated for under the **Anti-Corruption Commission Act No. 3 of 2012**.

9.48 We wish to state from the onset that the Restriction Notices placed on the Plaintiff's Account cannot be considered an illegal act on the part of the Defendant. This is for the simple reason that the Director-General's decision to place the Restriction Notices and eventually a Warrant of Seizure on the Plaintiff's Account came from a legitimate and well-

founded suspicion that the Plaintiff was involved in corrupt practices, money laundering, and in possession of property reasonably suspected to be proceeds of crime as evidenced by the Complaints found at pages 1 and 2 of the Defendant's Bundle of Documents. That this decision to place the Restriction Notices on the Plaintiff's Account is permissible under the law and forms part of the authority and power the Director-General of the Anti-Corruption Commission has.

9.49 We did, in our Judgment dated 21st June, 2024, and rightly so, find that the failure by the Defendant to serve the fresh Restriction Notice on the Plaintiff rendered it null and void. Therefore, whilst the Director-General has the power and authority to issue the fresh Restriction Notice on the third party, ZANACO, there was failure to serve the Notice on the Plaintiff as prescribed. Hence, our finding that the fresh Restriction Notice was null and void for want of service on the Plaintiff, thus making it invalid and without legal effect.

9.50 That notwithstanding, we have perused the Pleadings and evidence presented in this matter, both documentary and through the Plaintiff's testimony, and find that there is nowhere that the Plaintiff had demonstrated the elements required to prove misfeasance of public office.

9.51 The Plaintiff has not particularised nor provided this Court with the requisite evidence to show that he has suffered loss as a result of the alleged abuse of public power by the Director-General and his officers. The Plaintiff has failed to

show that the Director-General exercised the power to issue the fresh Restriction Notice for ulterior and improper purposes, and that the Director-General acted maliciously and in bad faith in issuing the said fresh Restriction Notice or in the conduct of investigations against the Plaintiff for offences he allegedly committed and was being investigated for under the **Anti-Corruption Commission Act No. 3 of 2012**. The Plaintiff has failed to demonstrate that the decision by the Director-General was not exercised for the public good.

- 9.52 We have already stated above that he who alleges must prove. It is our considered view that for the relief claimed for damages for abuse of statutory powers and authority, misfeasance of public office, the Plaintiff has failed to adduce evidence to prove that he did indeed suffer the said damage.
- 9.53 On the evidence before us, we find that the Plaintiff has not proved on a balance of probabilities that the tort of misfeasance in public office was committed by the Director-General or any other Officer of the Defendant. The claim, therefore, fails and is dismissed.
- 9.54 Whilst the Plaintiff has failed to prove that there was abuse of statutory authority, the failure to notify him of the fresh Restriction Notice means that his right to his money was infringed and thus, he is entitled to nominal damages, reflecting the absence of proof of actual damage.

9.55 The learned author Harvey McGregor in McGregor on Damages cites Lord Halsbury in defining nominal damages at page 281 as follows:

“Nominal damages are a technical phrase which means you have negative anything like real damage, but that you are affirming by your damages that there is an infraction of a legal right, which though it gives you no right to any real damages at all, yet give you a right to a verdict or judgment because your legal right has been infringed.”

9.56 It is our considered view and based on the above, that nominal damages are awarded when a claimant's legal right has been infringed, but they have not suffered nor have they adduced evidence of any quantifiable loss or harm. These damages serve a symbolic purpose: they affirm that the law has been breached, even if the breach caused no measurable injury.

9.57 In acknowledging that there was an infraction of the Plaintiff's legal right, it is our considered view that the Plaintiff's claim in (vi) succeeds only to the extent of an award for nominal damages.

9.58 The Plaintiff at (vii) of the Writ of Summons claims 'interest on the sums'. It is our considered view that as we have found that the Plaintiff's claims for special or liquidated damages have failed, the Plaintiff's claim for interest on the sums equally fails.

9.59 With regard to the Plaintiff's claim for "*Any other relief the Court may deem fit*" under (ix), we stand by the finding of the Supreme Court in the case of **Justine Mbita Silumbwe Vs Barcalys Bank Zambia Limited** ⁽¹⁸⁾, where the Appellant therein also claimed for "*any other relief the Court may deem fit*". The Court referred to the holding in the case of **Attorney General Vs D. G. Mpundu** ⁽¹¹⁾, *supra*, and stated as follows:

"In line with that decision, we are of the view that a specific figure in the form of special damages cannot be awarded under a general pleading: '4. Any relief the Court may deem fit.'"

10. CONCLUSION

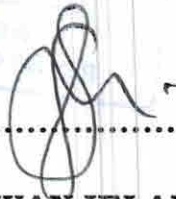
10.1 For the avoidance of doubt, we find as follows:

1. The Plaintiff's claims for damages for loss of use of money held in the restricted Account in the sum of USD 215,000.00 for the period between 7th June, 2023 and 7th December, 2023, fails;
2. The Plaintiff's claim for damages for loss of business fails;
3. The Plaintiff's claim for damages for loss of amenities fails;
4. The Plaintiff's claim for damages for emotional distress and anguish fails;
5. The Plaintiff's claim for damages for legal costs and other expenses incurred under and costs associated with Cause No. 2024/HPEF/003 fails;

6. With respect to the claim for damages for abuse of statutory powers and authority, there was an infraction of the Plaintiff's legal right as he was not served the fresh Restriction Notice. We therefore award nominal damages in the sum of K10,000.00 with interest at the short-term deposit rate from the date of the Writ of Summons to the date of this Judgment and thereafter at the average lending rate as determined by the Bank of Zambia, up to the date of payment; and
6. The claim for any other relief the Court may deem fit fails.

SIGNED, SEALED AND DELIVERED AT LUSAKA

THIS 21ST DAY OF NOVEMBER, 2025



.....
S. M. WANJELANI
HIGH COURT JUDGE



.....
P. K. YANGAILO
HIGH COURT JUDGE



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