

**IN THE HIGH COURT FOR ZAMBIA** **REPUBLIC OF ZAMBIA** **2024/HPEF/035**  
**AT THE ECONOMIC AND FINANCIAL** **HIGH COURT OF ZAMBIA**  
**CRIMES COURT HOLDEN AT LUSAKA** **ECONOMIC & FINANCIAL CRIMES DIVISION**  
*(Civil Jurisdiction)*



**IN THE MATTER OF:** **SECTIONS 29, 30 AND 31 OF THE FOREFEITURE OF PROCEEDS OF CRIME ACT NO. 19 OF 2010.**

**AND**

**IN THE MATTER OF:** **SECTION 71 OF THE FORFEITURE OF PROCEEDS OF CRIME ACT NO. 19 OF 2010.**

**AND**

**IN THE MATTER OF:** **SECTION 82 AS READ TOGETHER WITH SECTION 99 OF THE FORESTS ACT NO. 4 OF 2015.**

**AND**

**IN THE MATTER:** **SECTION 92 AS READ TOGETHER WITH SECTION 99 OF THE FORESTS ACT NO. 4 O 2015.**

**BETWEEN:**

**THE DIRECTOR OF PUBLIC PROSECUTION                      APPLICANT**

**AND**

**IN RE: 1,899 MOPANE LOGS, 152 MUKWA LOGS, 19 MUPAPA LOGS, 40 PLUNKS, FORK LIFTER SERIAL NUMBER TS 2510002-2016, 4 WOOD MISERS SERIAL NUMBER (i) 13700766055 1601, (ii) GB/T11707-2013-170Kgs 2019, (iii) GB/T11707-2013- 183Kgs- 2022, (iv) SENA PLUS INVESTMENTS LIMITED PREMISES STAND NUMBER 20520 ON CERTIFICATE NUMBER 185609 LUSAKA, TRUCK HORSE REGISTRATION NUMBER ARC 4827 AND TRAILER REGISTRATION NUMBER ARC 6223ZM, TRUCK AND TRIALER REGISTRATION NUMBER AAA 048 SF, TRUCK HORSE REGISTRATION NUMBER AAI 4905 F AND TRAILER REGISTRATION NUMBER BAL 4303ZM, FORK LIFTER 4C571504Z072 REGISTRATION NUMBER G. 15971, WHEEL**

**LOADER MODEL ZL30E ID NUMBER CLG0030ECCL352818,  
FRONT LOADER ZL 30E DL 377371-2023.**

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, A.  
M. ONONUJU AND I. M. MABBOLOBOLO ON 29<sup>TH</sup> SEPTEMBER,  
2025.**

**For the Applicant:**

*Mrs Magaret Kapambwe  
Chitundu and Ms.  
Martha Laura Luhanga-  
National Prosecution  
Authority*

**For the 1<sup>st</sup> to 4<sup>th</sup> Interested Parties:**

*Mr. D. Mosha and Mr. A  
Mushokabanji – Messrs  
Mosha and Company*

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## **JUDGMENT**

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

**A. CASES REFERRED TO:**

- 1. The National Director of Public Prosecution v Engels  
2176/2023;*
- 2. The People v Lukisha Kanyeka HP/096/2020;*
- 3. The Director of Public Prosecutions v ZMK 157,046.00,  
US\$23,007.14, and ZMK82,333.83 held in various Bank  
Accounts (2019/HP/1784);*
- 4. The Director of Public Prosecutions v Dumputha  
2020/HP/1287;*
- 5. The Director of Public Prosecutions v Jessie Bwalya  
Kapyelata Tapalu 2019/HP/0932;*
- 6. Kumarnathh Mohunram & Shelgate Investments CC v The  
National Director of Public Prosecutions, BOE Bank Limited  
& The Law Review Project (As Amicus Curiae) CCT 19/06  
[2007] 2ACC4;*
- 7. The National Director of Public Prosecutions v R.O Cook (Pty)  
Ltd 2004 (8) BCLR 844 (SCA);*
- 8. Khalid Mohammed v The Attorney General (1982) ZR-49;*
- 9. The Director of Public Prosecutions v The Anthony Sindala  
and Others 2023/HPEF/09;*

10. *Sidney Mwansa v The Director of Public Prosecutions* CAZ No. 276/2021;
11. *The People v Austin Liato*
12. *R. v John Rondo* (20001) 126 A Crim A. 562;
13. *Elvis Haatila and Another v The Director of Public Prosecutions* Appeal; No.73/2023;
14. *Nachanga Transport v Director of Public Prosecutions* CAZ No.252/2020;
15. *Johannes Kenneth Siogopi (T/A Nam Transport Co, A Partnership) v Director of Public Prosecution* Appeal No. 196/2020;
16. *The Director of Public Prosecutions v In Re Property proposed subdivision of subdivision F/2303/ 4<sup>th</sup> Street, Ibex Hill, Lusaka; Farm 4301/313 Eureka Baob Area, Musekese Drive, Lusaka; part of F/181A/C/1 Mungwi Road, Lusaka West; 10 x49 Inch Samsung Television set, K48, 458.00; K90,000.00; 107.00 United States Dollars; 100 Pounds; 1 Yen; and 10,000.00 United States Dollars;*
17. *The People v Charity Katanga* HPEF/07/2024; and
18. *Lumus Agriculture Company Limited and Others v Gwembe Valley Development Company Limited (In Receivership)* Appeal No. 29 of 1997.

**B. LEGISLATION REFERRED TO:**

1. *Authentication of Documents Act, Chapter 75 of the Laws of Zambia;*
2. *Road Traffic Act No. 11 of 2002 of the Laws of Zambia;*
3. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010 Of the Laws of Zambia;*
4. *The High Court Act Chapter 27 of the Laws of Zambia;*
5. *The Electronic and Communications Transaction Act No. 4 of 2021; and*
6. *The Forest Act No.4 of 2015 of the Laws of Zambia.*

**C. OTHER WORKS REFERRED TO:**

1. *Black's Law Dictionary by Bryan A. Garner, 7<sup>th</sup> Edition, Thomson West, USA.*

**1.0. INTRODUCTION AND BACKGROUND**

- 1.1. This is a Judgment in respect of the Applicant's Originating Notice of Motion for Non Conviction Based Order of Tainted Property filed on 8<sup>th</sup> November, 2024, pursuant to **Order 29**,

**31 and 71 of Forfeiture of Proceeds of Crime Act No. 19 of 2010 of the Laws of Zambia.**

- 1.2. The Application is in respect of Mopane Logs, Mupapa Logs, Planks, Premises, Equipment, Trucks and Trailers, Truck Horses, Fork Lifers, Wheel Loader and Front Loader. The Applicant alleges that these Properties are reasonably suspected to be proceeds of crime and are therefore tainted and liable for forfeiture by the State.
- 1.3. The Application is accompanied by an Affidavit and Skeleton Arguments filed on even date.
- 1.4. The Interested Parties filed their Opposition by way of Affidavit and Skeleton Arguments on 31<sup>st</sup> March and 2<sup>nd</sup> June, 2025.

**2.0. AFFIDAVIT EVIDENCE**

- 2.1. The Applicant's Affidavit in Support is deposed to by **Nixon Shakantu**, an Investigations Officer in the employ of the Department of National Parks and Wildlife and based in Chirundu District and assigned on 28<sup>th</sup> October, 2024, to the case relating to illegal forest produce.
- 2.2. Mr. Shakantu deposed that a team of Officers from the Department of National Parks and Wildlife and Department of Forestry was assembled comprising of Senior Technologists Mr. Kelvin Kamukulu, Mr. Levy Nyangulu, Mr. Teddy Simasokwe, Mr. Andrew Likonde, Mr. Clement Mutale, Mr. James Mutale, Mr. James Muyoma and himself to investigate the case.

- 2.3. The Deponent averred that on 29<sup>th</sup> October, 2024, he and the other Officers went to Sena Plus Investment, a company dealing in Logs and Timber, to establish whether the company and Wang Xue Xin, the owner, were dealing in illegal major forest produce. That upon arrival, at the premises, they discovered that most logs were not hammer marked. Further that they discovered a lot of unmarked timber mixed with marked timber, machinery used to cut the logs and Trucks used to transport the Logs.
- 2.4. According to the Deponent, they found Mr. Wang Xue Xin who they informed that they were on the premises on allegation of illegal dealing in forest produce and a Search Warrant marked **“NS1”** was produced. That the team conducted a search and discovered 1,898 Mopane Logs, 152 Mukwa Logs, 19 Mupapa Logs, 40 Planks and the majority of the Logs were not hammer marked.
- 2.5. That upon Mr. Wang being questioned as to why the Logs were not harmer marked and cants, his response was that the Logs were delivered like that and that his interest was in ensuring that the Logs had documents and not whether they were hammer marked or not.
- 2.6. Further that on 29<sup>th</sup> and 31<sup>st</sup> October, 2024, he recorded Statements marked **“NS2”** and **“NS3”** from Mr. Andrew Likonde and Levy Nyangulu respectively who were part of the team to confirm what they found during the visit to Sena Plus Investments.

- 2.7. The Deponent averred that on 1<sup>st</sup> November, 2024, he proceeded to seize the cited Properties subject of this Application as they were reasonably suspected to be proceeds of crime. Copies of Seizure Notice marked “**NS4**” and “**NS5**” were exhibited in this regard.
- 2.8. It was the Deponent’s deposition that on 31<sup>st</sup> October, 2024, Mr. Kelvin Kamukulu (Senior Technologist at Forest Department) identified and confirmed that the species were Mopane Logs, Mukwa Logs and Mopane Planks as shown in the Certificate of Identification of Exhibits marked “**NS6**”.
- 2.9. The Deponent averred that he proceeded to formally charge and arrest the Interested Party, Mr. Wang Xue Xin with the offence of **Illegal Possession of Forest Produce** contrary to **Section 99** of the **Forest Act No. 4 of 2015** of the **Laws of Zambia** and the offence of **Mixing Marked Forest Produce and Unmarked Forest Produce** contrary to **Section 92** as read with **Section 99** of the **Forest Act No. 4 of 2015** of the **Laws of Zambia** which are serious offences.
- 2.10. The Deponent deposed that he had been advised by Counsel and believes the same to be true that the above cited properties are Tainted Properties and liable for forfeiture because they are reasonably suspected to be proceeds of crime. Further that the offences in **Section 71** of the **Forfeiture of Proceeds of Crime Act** and **Sections 89, 92** as read with **Section 99** of the **Forest Act No. 4 of 2015** of the **Laws of Zambia** are serious offences.

- 2.11. The Affidavit in Opposition to an application for a Non-Conviction Based Forfeiture Order of Tainted Property was deposed to by Wang Xue Xin on 31<sup>st</sup> March, 2025, as the Interested Party and Director in Sena Plus Investments Limited.
- 2.12. Mr. Wang Xue Xin deposed that on 28<sup>th</sup> July, 2022, he applied for Incorporation of Sena Plus Investments Limited whose primary business is logging at the Patents and Companies Registration Agency (PACRA) as shown in the Certificate of Incorporation marked **“WX1”**. That as a timber merchant, he incorporated the company to facilitate the export of timber and in that regard began purchasing various types of timber including Mukwa Logs, Mupapa Logs and Mopane Logs.
- 2.13. According to the Deponent, he only purchased the logs subject of the forfeiture Application after the procedures or sellers provided him with documents proving their legal ownership and possession of the said logs. That the sellers produced legal documents such as receipts, felling permits, conveyancing licences and merchants’ agreements exhibited collectively as **“WX2”**.
- 2.14. It was Mr. Wang Xue Xin’s averment that in establishing the company, he had been receiving capital from the Republic of China, which funds he had invested in Sena Plus Investments. He exhibited **“WX3”** as the Bank Statement from First National Bank Zambia Limited demonstrating receipts of funds used for setting up the business and purchasing the Logs in question.

- 2.15. The Deponent averred that the Logs in question were purchased using legally acquired funds and at no time had he used money derived from criminal activities. That he had been advised by his Advocates and believes to be true that the said Logs do not amount to tainted property and therefore can not be subject to forfeiture by the State.
- 2.16. It was deposed that in furtherance of setting up the company for export of timber and obtaining requisite Licences, he entered into a Lease Agreement marked **"WX4"** for the premises cited as Sena Plus Investments Limited, Plot No. 20520 on Certificate of Title No.185609, Lusaka. That since the premises are leased and not owned, he had been advised by his Advocates that they can not be subject of forfeiture.
- 2.17. Further that in order to operate the business, he had hired various equipment from Mozambique from a company known as Kai Hong Sociedade Limitada and also from an individual named Eric Lungu. That among the equipment hired are two Folk Lifters and a Wheel Loader. **"WX5"** was exhibited as various documents collectively demonstrating ownership of the equipment and paper work authorizing movement from Mozambique to Zambia.
- 2.18. It was deposed that the Deponent also hired a Front Loader and a Truck and Trailer Registration No. AAA 049 SF from Kai Hong Sociedade Limitada, all hired by Sena Plus from Mr. Eric Lungu. Further that the company hired Truck Horse Registration No. AAI 4905F and Trailer No. AA399NP and Truck Registration No. BAL 4303ZM from Eric Lungu.

- 2.19. It was averred that the aforementioned Trucks and equipment were supposed to be returned to their respective owners, but before this could be done, they were seized as part of these forfeiture proceedings. That he had been advised by his Advocates and believes to be true that the hired equipment and vehicles do not constitute tainted property, not proceeds of crime and consequently can not be subject of forfeiture by the State.
- 2.20. Finally, the Deponent averred that he is lawfully entitled to possession of the said properties either through ownership, lease or hire arrangements and none of the Property in question constitutes tainted property within the meaning of the Law.
- 2.21. The 2nd Interested Party's Affidavit was sworn by **Ji Rong Li**, a Chinese National of Plot No. 8509 Chinika, Industrial Area in his capacity as the holder of Power of Attorney of the 2nd Interested Party exhibited as "**JRL1**".
- 2.22. He deposed that Juan, the 2nd Interested Party is the lawful owner of the property known as Stand No. 20520, Lusaka having been granted the Certificate of Title by the Commissioner of Lands on 31<sup>st</sup> July, 2012, as exhibited and marked "**JRL2**".
- 2.23. According to Mr. Li, the said property was lawfully leased to the 1st Interested Party pursuant to a written Lease Agreement entered into between the Parties as may be gleaned from the exhibit marked "**JRL3**". That the said Lease was entered into in good faith in the ordinary course

of business and prior to any knowledge or indication of the alleged activities by the 1<sup>st</sup> Interested Party. Further that the 2<sup>nd</sup> Interested Party acquired and held the said property lawfully and had no knowledge of, nor any involvement in the alleged offences involving Illegal Possession of Forest Produce and Unmarked Logs by the 1st Interested Party.

2.24. It was his averment that he verily believes that the 2<sup>nd</sup> Interested Party took no part in the commission of any offence, nor did he permit or encourage any illegal conduct to occur on the said premises. That the 2<sup>nd</sup> Interested Party simply leased the premises in a lawful manner exercising rights incidental to ownership and had no knowledge of any illegal use of the premises by the 1st Interested Party.

2.25. The Deponent avers that he has been advised by his Advocates and believes to be true that notwithstanding the Application for Non-Conviction Based Forfeiture, the law provides lawful protection for innocent owners of property who had no knowledge or involvement in the alleged criminal activity. That premised on the foregoing, he respectfully submits that the 2<sup>nd</sup> Interested Party has demonstrated sufficient legal and equitable interest in the said Property to prevent the Forfeiture Order from being granted against the Property known as Stand No. 20520 Lusaka.

2.26. The 3rd Interested Party's Affidavit in Support of Declaration of Interest was sworn by **Eric Lungu**, a Zambia National of Chanida Border Post, off Mozambique Road, who deposed that he has an interest in certain Motor Vehicles and/or

Equipment which are the subject of Forfeiture Proceedings instituted by the Applicant.

- 2.27. Mr. Lungu deposed that sometime prior to the commencement of these Proceedings, he was approached by the 1<sup>st</sup> Interested Party who requested to hire some of his Trucks to assist with transportation and business operations for his company known as Sena Plus Investments. That on or about 10<sup>th</sup> May, 2024, he entered into a Truck Rental Agreement with the 1<sup>st</sup> Interested Party for hire of his Trucks. The Agreement is produced and exhibited as **"EL1"**.
- 2.28. The Deponent averred that he is the lawful owner of a Truck Horse bearing Registration No. AAI 490SF and Trailer bearing Registration No. 399NP as shown in a true copy of the Sale Agreement executed with the previous owner Mr. Alberto Mario Jose exhibited as **"EL2"**. That he was in the process of effecting a Change of Ownership of the said Motor Vehicle into his name.
- 2.29. Further that the Deponent also owns a Truck and Trailer bearing Registration No. BAL 4303ZM whose White Book or copy of the same he was not able to find at the time of swearing his Affidavit but which he would look for and produce into Court.
- 2.30. The Deponent avers that he is also the legal owner of Truck Horse bearing Registration No. ARC 4387 and Trailer with Registration No. ARC 6223Z exhibited as **"EL3"** for proof of ownership.

- 2.31. According to Mr. Lungu, the Rental Agreement entered into with the 1<sup>st</sup> Interested Party was done in the ordinary course of his lawful transport business and he had no reason to suspect any unlawful use of the Equipment or Trucks rented out. That the above mentioned Trucks and Trailers were acquired well before the 1<sup>st</sup> Interested Party became involved in the alleged offences concerning Unlawful Possession of Forest Produce and Mixing of Unmarked Logs. Further that he was never made aware of, nor did he have knowledge of any criminal activities associated with the said Trucks or Equipment while in the possession of the 1<sup>st</sup> Interested Party.
- 2.32. The Deponent averred that he did not, at any point, authorize or take part in the commission of any offence and has not benefited from any unlawful activity alleged against the 1<sup>st</sup> Interested Party. That he simply entered into a lawful agreement with the 1<sup>st</sup> Interested Party, being the legal owner of the said Trucks and Trailers in the ordinary course of business operations.
- 2.33. The Deponent deposed that he has been advised by his Advocates and verily believes to be true that notwithstanding the Application for Non-Conviction Based Forfeiture, the law provides lawful protection for innocent owners of property who had no knowledge or involvement in the alleged criminal activity. That he humbly requests Court to recognize and protect his interest in the said Trucks and to order that the same should not be affected by the

Forfeiture Application brought against the 1<sup>st</sup> Interested Party.

- 2.34. The Affidavit in Opposition filed on behalf of the 4<sup>th</sup> Interested Party was sworn by **Wang Kai Hong**, a Chinese National of Building 2701, Hongmeli Community, Jiangbet Street, Dongyang City, Zhejiang Province, People's Republic of China in his capacity as the Director of Kai Hong Sociedade Unipessoal Limitada, a company with interest in certain Motor Vehicles and/or Equipment which are the subject of Forfeiture Proceedings instituted by the Applicant.
- 2.35. Mr. Wang Kai Hong deposed that the company is duly registered under the Laws of the Republic of Mozambique as shown in the Certificate of Incorporation marked "**WHK1**". That the 4<sup>th</sup> Interested Party entered into a Hire Agreement with the 1<sup>st</sup> Interested Party for the lease of various equipment including Trucks, Wood Mixers and Folk Lifts as indicated in the Hire Agreement marked "**WHK2**".
- 2.36. According to this Deponent, he came to learn that the 1<sup>st</sup> Interested Party was involved in Court Proceedings and that the State had seized several Logs along with equipment hired from the 4<sup>th</sup> Interested Party. That the 4<sup>th</sup> Interested Party is the lawful owner of two Folk Lifters, bearing Serial Numbers TS2510002-106 and 4C571504Z-073 Registration No. G which are, among other Properties, subject of Forfeiture. Proof of ownership was produced and shown as "**WHK3**".

- 2.37. Further that the 4<sup>th</sup> Interested Party is also the legal owner of a Front Loader with Model No. ZL 304DL377371-2023 which is also part of the Property under these Forfeiture Proceedings. That additionally, the 4<sup>th</sup> Interested Party is the legal owner of a Wheel Loader with Model No. ZL 30EID No. CLG 40030 ECCL exhibited as **“WHK4”**.
- 2.38. It was the Deponent’s clarification that what the Applicant refers to as a Truck and Trailer bearing Registration No. AAA 049SF is in fact a Sino Truck Rigid, which has no trailer and is solely owned by the 4<sup>th</sup> Interested Party as appears in the copy of a White Book produced and marked as **“WHK5”**.
- 2.39. According to this Deponent, the 4<sup>th</sup> Interested Party also leased out Wood Misers to the 1<sup>st</sup> Interested Party, and **“WHK6”** is exhibited as collective copies of the Customs Road Freight Manifest confirming transportation of the said equipment from Mozambique into Zambia. That all the aforementioned equipment was legally imported into Zambia pursuant to the Hire Agreement as shown in the importation documentation collectively marked as **“WHK7”**. That the equipment was leased in the normal course of business, and he only came to learn of the 1<sup>st</sup> Interested Party’s Court Proceedings after the said lease had been effected.
- 2.40. It was averred that the 4<sup>th</sup> Interested Party acquired lawful interests in the aforementioned property long before the 1<sup>st</sup> Interested Party allegedly became involved in the offences of **Unlawful Possession of Forest Produce or Mixing Marked with Unmarked Logs**. That the 4<sup>th</sup> Interested Party was not aware of any alleged illegal activity associated with the said

Property and took no part in the offence if any committed by the 1st Interested Party and that the Property was leased by the 1st Interested Party in good faith and in the ordinary course of its business.

- 2.41. The Deponent deposes that he has been advised by the 4<sup>th</sup> Interested Party's Advocates and believes to be true that, notwithstanding the Application for Non- Conviction Based Forfeiture, the law provides lawful protection for innocent owners of property who had no knowledge or involvement in the alleged criminal activity and that the 4<sup>th</sup> Interested Party has established a sufficient interest in the subject Property to prevent forfeiture of the same to the State.
- 2.42. The Affidavit in Reply to the Application of Declaration of Interest by the 2<sup>nd</sup> Interested Party was sworn by **Nixon Shakanthu**, the Investigations Officer in the Department of National Parks and Wildlife stationed at Chirundu District.
- 2.43. He deposed that he had been informed by Counsel for the Applicant and believes the same to be true that:
  - 2.43.1. Ji Rong Li had sworn his Affidavit in his capacity as a Donee of a Power of Attorney granted to him by his Principal, Juan Rao.
  - 2.43.2. as a Donee of a Power of Attorney, Mr. Ji Rong Li can not competently attest to facts, events, or the state of mind of his principal that occurred before he was granted such authority as he purports to do in Paragraphs 4, 5, 6, 7, 8 and 9 of the Affidavit.

- 2.43.3. a Power of Attorney does not confer authority upon an agent to take oath.
- 2.43.4. Ji Rong Li has sworn the Affidavit in his capacity as a Donee of a Power of Attorney, but has failed to disclose his trade or profession as by law demanded.
- 2.43.5. Ji Rong Li, as holder of a Power of Attorney has not disclosed how he came to know the facts and events referred to in Paragraphs 4, 5, 6, 7, 8 and 9 of his Affidavit which, according to his own depositions occurred well before he was granted the Power of Attorney.
- 2.43.6. Paragraphs 4, 5, 6, 7, 8 and 9 of Ji Rong Li's Affidavit are irregular as they contain assertions regarding events which, on the face of the Affidavit, occurred before he was granted the Power of Attorney and without disclosure of how he came to know them.
- 2.43.7. exhibit **"JRL2"** produced as evidence of ownership of Stand No. 20520, Lusaka is a copy of a public document which by law ought to be certified as a true copy by officers at the Ministry of Lands who are the custodians of the original record. That the said exhibit is not certified in accordance with the law and that uncertified copies of public documents may not be relied upon in these proceedings.

- 2.44. The Deponent deposed that during the course of his investigations, which included an interview with the Manager of Stand No. 20520, Lusaka, Mr. Wang Xue Xi, there was no indication that the subject Property cited above where the illegal business was being conducted, was leased or rented from a registered owner. That consequently, the Lease Agreement marked as exhibit **"JRL3"** was entirely new to him.
- 2.45. According to the Deponent, he had observed that the Power of Attorney marked **"JRL1"** was granted to Ji Rong Li on 30<sup>th</sup> April, 2025, and the Rental Agreement to which he had made extensive reference was signed on 1<sup>st</sup> September, 2024, well before Ji Rong Li was granted the Power of Attorney. Further that by Paragraph 2 of the purported Lease Agreement titled "Rental Contract" the Lease term commenced on 1<sup>st</sup> January, 2025, when in contrast, the investigations into the alleged offences were conducted on the land which is subject of the Forfeiture Application in October, 2024, and the Lease did not exist at the time.
- 2.46. The Deponent averred that in view of the information available to him and the time of events including the fact that the Truck Rental Agreement now relied upon by the 2nd Interested Party nearly six months after the Forfeiture Proceedings had been filed and served, and was not discovered during investigations, makes him believe that the agreement was not in existence nor was it brought to the attention of the Investigators at the material time.

- 2.47. Further that in the course of his investigations, the Deponent extended his inquiries to the Department of Immigration where he interviewed Mr. Mazuba Kalubula, a Senior Risk Management and Compliance Officer, on the travel history of Mr. Juan Rao, specifically his entries into and exits from Zambia. That on 14<sup>th</sup> May, 2024, he recorded a formal statement from Mr. Kalubula in which he informed the Deponent that Mr. Juan Rao, or any person bearing that name, last entered and exited Zambia in the year 2020. The statement by Mr. Kalubula is exhibited as **“NS1”**.
- 2.48. The Deponent averred that based on the timing of the production of the Lease Agreement and the absence of any reference to it during the investigations phase, he had reason to doubt the authenticity of the same and believes it was created only after the commencement of these proceedings.
- 2.49. The Affidavit in Reply to the Application of Declaration of Interest by the 3<sup>rd</sup> Interested Party was also sworn by **Nixon Shakantu**, the Investigations Officer in the Department of National Parks and Wildlife. He deposed that based on the information provided by Counsel for the Applicant which he believed to be true, the Affidavit by Eric Lungu, the 3<sup>rd</sup> Interested Party is incomplete due to the absence of the date or month in the Jurat rendering it defective. That it does not meet the required standard for sworn evidence and as such is not valid for use in these Proceedings.
- 2.50. According to Mr. Shakantu, having personally perused the Truck Rental Agreement exhibited as **“EL1”** purportedly

entered into between Eric Lungu and the 1<sup>st</sup> Interested Party, he noted that the same is not signed by the purported “rental company” and only the name “*Eric Lungu*” is written on the Agreement without a signature.

- 2.51. It was deposed that in reply to Paragraph 5 of the Affidavit by Eric Lungu, he stated that he entered into the Truck Rental Agreement on 10<sup>th</sup> May, 2024, which Agreement has listed Truck Registration No. AAI 4905SF among those hired yet the Agreement for Sale marked “**EL2**” indicates that he purchased the said Truck and Trailer No. AA 339 NP on 20<sup>th</sup> May, 2024, which is 10 days after Rental Agreement was entered into.
- 2.52. The Deponent averred that from his reading of the Rental Agreement marked “**EL1**” he noted that it plainly makes reference to a company known as Donkey Transport purportedly incorporated in Zambia. That however, the Deponent of the Affidavit, Eric Lungu has not demonstrated his relationship with the said company as well as the relationship between the said company and the Trucks now subject of the Forfeiture Application.
- 2.53. Further that with regard to exhibit marked “**EL2**” as proof of ownership of Truck Horse bearing Registration No. AA1490 SF and Trailer No. AA399 NP, these were registered in Mozambique and were purportedly sold by a Mr. Mario Alberto Jose from Mozambique according to the attached foreign document which is not authenticated as required under the **Authentication of Documents Act, Chapter 75** of the **Laws of Zambia**. That additionally, Eric Lungu has

not exhibited any evidence to demonstrate that he did actually pay the sum of USD22,000.00 indicated as the purchase price.

- 2.54. A related averment was that the Deponent had been informed by Counsel for the Applicant and believes the same to be true that any vehicle imported into Zambia must be registered within 14 days and use of such unregistered vehicle is prohibited and amounts to an offence contrary to **Section 11 of the Road Traffic Act No. 11 of 2002 of the Laws of Zambia.**
- 2.55. According to Mr. Shakantu, after perusing the clause titled "Rental Period" in the exhibit marked "**EL1**" he noted that the term of the purported hire is May, 2024, to June, 2024, a period of only one month. That the Deponent conducted his investigations into the alleged activities involving the Trucks in October, 2024, effectively meaning that the Truck Hire Agreement had long lapsed and did not exist at the time the Truck and Trailers were impounded for illegally transporting the subject forest produce.
- 2.56. It was Mr. Shakantu's deposition that he had further been informed by Counsel for the Applicant and believes the same to be true that Exhibit marked "**EL3**" produced as proof of ownership of Truck Horse bearing Registration No. ARC 4827ZM is a public document which is not certified by the Road Transport and Safety Agency (RTSA) who have custody of the Registration Records. Further that the same is a computer printout of records held by RTSA which had not

been certified in accordance with the law and should therefore be expunged.

- 2.57. The Deponent in reference to Paragraph 10 of the Affidavit sworn by Eric Lungu averred that there is no print out to prove ownership of the Trailer Registration No. of ARC 6223Z and no explanation has been offered in this regard. Further that the said Trailer is not listed among the articles on rental to Sena Plus Investments Ltd in exhibit "**EL1**".
- 2.58. It was deposed that Eric Lungu had failed to demonstrate in any other way, whether by purchase, direct import, payment of road and inspection licences and insurance that he owns the Trucks. That he reiterates that he found the Trucks and Trailers, now claimed by the said Eric Lungu, within the premises of Sena Plus Investment Ltd and they were evidently being used for ferrying the illegal forest produce.
- 2.59. The Deponent averred that he had interviewed Mr. Wang Xue Xi, the Manager at Sena – Plus Investments Ltd and at no point during the interview did Mr. Xi mention any Truck hire arrangement with anyone and on the contrary, he stated that the Trucks delivered the forest produce and that his only concern was whether the accompanying documentation was in order.
- 2.60. According to the Deponent, he had been informed by Counsel for the Applicant and believes the same to be true that Paragraph 16 sworn by Eric Lungu merely restates the law of protection of innocent owners which is a legal argument and should not form part of an Affidavit. That it

is for this Court to evaluate the evidence presented by the 3<sup>rd</sup> Interested Party and determine first whether ownership has been established and secondly, whether he qualifies as an innocent owner.

- 2.61. It was averred that given the gaping loopholes highlighted, particularly that the Truck Rental Agreement, now being relied upon by the 3<sup>rd</sup> Interested Party was entered into nearly 6 months after the Forfeiture Application was filed and served and never featured in the course of investigation, it was the Deponent's honest belief that the Rental Agreement was an afterthought.
- 2.62. The Applicant filed its Affidavit in Reply to the 4<sup>th</sup> Interested Party's Application for declaration of Interest on 6<sup>th</sup> June, 2025, through Mr. **Nixon Shakantu**, an Investigator within the Department of National Parks and Wildlife stationed in Chirundu. He deposed that he had carefully perused exhibit marked "**WHK1**" which purports to be a Certificate of Incorporation of Kai Hong Sociedade Unipessoal Limitada in the Republic of Mozambique. That he had been advised by Counsel for the Applicant and believes the same to be true that the said Certificate of Incorporation is not duly authenticated.
- 2.63. Further that the Deponent swore the Affidavit purporting to be the Director of Kai Hong Sociedade Unipessoal Limitada while it is noted that the exhibit marked "**WKH1**" indicates that there is only one shareholder and one Director of Kai Hong Sociedade Unipessoal Limitada by the name of Xiang Rong LI. That he had been advised by Counsel and believes

the same to be true that the Deponent therefore has no capacity to swear the Affidavit on behalf of the 4th Interested Party.

- 2.64. He deposed further that having carefully perused the exhibit marked **“WKH2”** which purports to be a Hire Agreement of Trucks, Wood Misers and Fork Lifters subject of the Application for Forfeiture, he noted that the purported Hire Agreement does not indicate the date or place of execution. That related to this, the Deponent has signed as legal representative of Kai Hong Company when he is neither Director nor Shareholder or otherwise demonstrated that he has authority to execute documents on behalf of Kai Hong Company.
- 2.65. Further that Xian Rong Li who is the sole shareholder and Director of Kai Hong Sociedade Unipessoal Limitada (“the lessor”) has signed the purported Hire Agreement as a legal representative of Sena-Plus Investment Limitada (“the Lessee”) but he has not demonstrated that he has legal capacity to execute documents on behalf of Sena Plus Investments Limited. Additionally, that the list of equipment in the purported Hire Agreement is neither mentioned therein nor is it independently executed.
- 2.66. This Deponent avers that he had been advised by Counsel for the Applicant and believes to be true that the exhibits marked **“WKH3” “WKH4”** and **“WKH5”** have not been duly authenticated. Further that the exhibit marked **“WHK5”** does not indicate that Kai Hong Sociedade unipessoal

Limitada is the registered owner of the Truck bearing Registration No. AAA 049 SF.

- 2.67. Deposing further on behalf of the Applicant, it was averred that there is no Lease Agreement between the 4th Interested Party and the 1<sup>st</sup> Interested Party in relation to the Wood Misers and no proof of ownership of the Wood Misers. That the exporter of the Wood Miser as shown in the Road Manifest exhibited as “**WKH6**” is Bocose Import and Export Trading, Mozambique and not Kai Hong Sociedade Unipessoal Limitada. Further that he had been advised by Counsel for the Applicant and believes to be true that exhibits marked “**WKH6**” and “**WKH7**” have not been duly certified.
- 2.68. The final averment by the Deponent is that the 4th Interested Party has not demonstrated sufficient interest in the subject Property which is tainted and should subsequently be forfeited to the State.

### **3.0. SKELETON ARGUMENTS**

- 3.1. The Applicant submitted that the Application is brought pursuant to **Sections 29** and **31** of the **Forfeiture of Proceeds of Crime Act (“FPOCA”)**. **Section 71** of **FPOCA** was also relied upon.
- 3.2. It was contended that the properties subject of this Application are proceeds of crime given that the 1<sup>st</sup> Interested Party was in possession of Logs which were not hammer marked but were mixed with the marked ones in contravention of the legal requirement that forest produce

should be hammer marked. That the hammer marks show which district or forest the forest produce originated from which is important because it gives the forest products the identity. Further, that where there are no hammer marks, officers are not able to tell and that the absence of hammer marks on the logs in the case in *casu* is a clear indication that the Logs were produced illegally.

- 3.3. Related to the above, it was submitted that the mixing of the marked and unmarked logs is illegal because it shows that there was illegal logging which happened for the 1<sup>st</sup> Interested Party to have been found in possession of marked and unmarked logs. That this fact makes it clear that they were dealing in illegal forest produce the possession of which makes them property suspected to be proceeds of crime.
- 3.4. Submitting further, it was argued that the machines and the Trucks found at the premises were used as instrumentalities in the commission of the offence and so they are tainted Properties. It was submitted that in assessing whether property amounts to an instrumentality, the link between the crime committed and the property must be functional to the commission of the offence. That the property must facilitate or make possible the commission of the offence and must be instrumental to the commission of the same. That the machinery and Trucks played a role in the commission of the offence.
- 3.5. The case of **The National Director of Public Prosecution v Engels**<sup>1</sup> was cited in which the Court is said to have held

that the assets subject to the order were instrumentalities of illegal activities and so were to be forfeited to the State.

- 3.6. We were urged to adopt the reasoning in the High Court case of **The People v Lukisha**<sup>2</sup> where Justice P. K. Yangailo held that a Motor Vehicle which the convicts had used when going to steal and also used to put the stolen goods on was connected to the commission of the offence and was therefore forfeited to the State.
- 3.7. It was submitted that similarly, the Court of Appeal in the case of **Nachanga Transport v The Director of Public Prosecutions**<sup>14</sup> upheld the decision of the Lower Court that the Fuso Truck which was used in the commission of the offence to transport Mukula logs had become tainted property and dismissed the Appeal.
- 3.8. The Applicant contended that the facts of this case clearly violate **Section 71** of the **FPOCA** which stipulates a mandatory sentence of five years imprisonment for those found guilty by the Court underscoring the seriousness of the offences committed and the need for appropriate response.
- 3.9. The cases of **The Director of Public Prosecutions v ZMK 157,046.00, US\$23,007.14, and ZMK82,333.83 held in various Bank Accounts**<sup>3</sup> and **The Director of Public Prosecutions v Dhumputha**<sup>4</sup> were cited for the position that civil forfeiture does not require a criminal conviction or even a formal charge against the owner of property.

- 3.10. The constitutionality of Non-Conviction Based Forfeiture was reiterated and the case of **The Director of Public Prosecutions v Jessie Bwalya Kapyelata Tapalu**<sup>5</sup> was cited to bolster the same.
- 3.11. We were urged to embrace the reasoning articulated by Van **Heerden A.J** in the South African Constitutional Court case of **Kumarnath Mohunram & Shelgate Investments CC v The National Director of Public Prosecutions, BOE Bank Limited & The Law Review Project (As Amicus Curiae)**<sup>6</sup> where she cited the holding of the Supreme Court in the case of **The National Director of Public Prosecutions v R.O Cook (Pty) Ltd**<sup>7</sup> for the position, among others, for orders to be made for the forfeiture of property which is tainted because it is linked to the commission of crime either because it is proved on a balance of probabilities to be an instrumentality of an offence or proved to be proceed of the unlawful activity.
- 3.12. The 1st Interested Party's Skeleton Arguments in Opposition were filed on 31<sup>st</sup> March, 2025, the gist of which is that the Application for Non-Conviction Based Forfeiture is opposed on the grounds that the Properties sought to be forfeited do not constitute '*tainted property*' within the meaning of the **FPOCA**.
- 3.13. **Section 31 (1)** of the **FPOCA** was cited for the standard of proof on a balance of probabilities required in Non-Conviction Based Forfeiture Proceedings and also the case of **Nachanga Transport v The Director of Public Prosecution**<sup>14</sup> for the Position that Non- Conviction Based

Forfeiture Proceedings remain civil in nature. That they require that the Applicant must prove that the Property is tainted based on admissible evidence and not mere speculation or suspicion. That in the instant case, the Applicant has a duty to demonstrate a sufficient link between the alleged criminal conduct and the property seized.

- 3.14. It was contended that in keeping with the decision in **Khalid Mohammed v The Attorney General**<sup>8</sup>, the Court in the case of **The Director of Public Prosecutions v Anthony Sindala and Others**<sup>9</sup> stated that the onus of proof and its implications lies on the party who moves the Court to forfeit any property to prove that the property is tainted and that where such a party fails to prove that the property is tainted, a Forfeiture Order should not be granted.
- 3.15. Submitting further, it was stated that in the case of **Sidney Mwansa v The Director of Public Prosecutions**<sup>10</sup>, the Court of Appeal pointed out that an Application for a forfeiture Order launched pursuant to **Section 29** of the **FPOCA**, must establish that the property in issue is tainted property, because it was either realised from the commission of a serious offence or because it was used or was intended to be used to commit a serious offence.
- 3.16. According to the 1<sup>st</sup> Interested Party, as deposed in the Affidavit in Support, Sena Plus Investment Limited was lawfully incorporated for timber trading as shown in the registration documents. Furthermore, the Logs, Trucks, Forklifts, Trailers and other Equipment listed for forfeiture

were legally acquired and the 1<sup>st</sup> Interested Party has shown by adducing evidence that the logs and planks were purchased from legitimate sources with supporting documentation. That further still, the funds used in acquiring the logs originated from legal sources as evidenced by Bank Statement from First National Bank while the various trucks, Trailers and Machinery were leased from third parties, negating any claim that they are tainted properties.

3.17. The 1<sup>st</sup> Interested Party argued that as held in various cases including the **Nachanga Transport**<sup>14</sup> case, where an interested Party provides reasonable and credible evidence demonstrating lawful ownership, the burden shifts to the State to establish, with specificity, how the property was derived from criminal conduct, which burden the Applicant herein has failed to discharge.

3.18. The case of **The People v Austin Liato**<sup>11</sup> was called in aid for the position that under **Section 71 (2)** of the **FPOCA** does not impose an obligation on the accused person to prove any ingredient of the offence under **71 (1)** of the **Act**, but it does afford the accused an opportunity to explain the absence of reasonable grounds of suspicion that the property he was found in possession of under **Section 71(1)** were proceeds of crime.

3.19. Reliance was placed on the case of **R. v John Rondo**<sup>12</sup> for the position that reasonable suspicion involves less than a belief but more than a mere possibility and that there must

be some factual basis for the suspicion as reasonable suspicion is not arbitrary.

3.20. It was argued that there must be a serious offence which is identifiable and linked to the proceeds under **Section 71**. That as held in the case of **Elvis Haatila and Another v The Director of Public Prosecutions**<sup>13</sup>, it is not enough to merely show that the property is linked to conduct that is unlawful as the evidence must prove so, be it on a balance of probability. That the offence that was committed as a result of that unlawful act or conduct herein is not a serious offence and does not qualify as tainted property for the purposes of **Section 29** of the **FPOCA** and can not be forfeited using that provision.

3.21. According to the 1<sup>st</sup> Interested Party, the offences suspected to have been committed do not amount to serious offences. That as the Record shows, the Applicant's Application is premised on the suspected offences of illegal **Possession of Forest Produce** contrary to **Section 89** as read with **Section 99 of the Forest Act No. 4 of 2015** and mixing of marked and unmarked Forest produce contrary to **Section 92** as read with **Section 99 of the Forestry Act No.4 of 2015**. That therefore the offences do not fall under the punishment provided under **Section 99 (a)** as they were not committed within or in connection with a forest area. Further that the punishment for these suspected offences is found under **Section 99 (b)** which attracts punishment of a fine not exceeding Thirty Thousand Penalty Units or to

imprisonment for a term not exceeding six months or to both.

- 3.22. The submission therefore is that since the punishment which can be meted for the suspected offences attracts a fine not exceeding Thirty Thousand Penalty Units or imprisonment for a term not exceeding six months, the cited properties can not be forfeited as the offences fall outside the ambit of tainted property capable of being forfeited to the State within the meaning of **Section 2** of the **FPOCA** which defines a serious offence as one that attracts imprisonment of not less than twelve months.
- 3.23. The 1<sup>st</sup> Interested Party submitted that the leased premises at Stand No. 20520, Certificate of Title No. 185609, Lusaka do not belong to it. That similarly, the Trucks and Machinery were leased from third parties including Kai Hong Sociedade Limitada and that as reaffirmed in the **Nachanga Transport** case, property belonging to third parties who are not involved in criminal conduct can not be forfeited. Further that therefore the Applicant has failed to meet the evidentiary threshold required for Non-Conviction Based Forfeiture under **Sections 29 to 31** of the **FPOCA** meaning that the Logs, Planks, Vehicles and Equipment in question do not constitute “tainted property” and therefore not subject to forfeiture.
- 3.24. The 2<sup>nd</sup> Interested Party’s Skeleton Arguments were filed on 7<sup>th</sup> May, 2025, anchored on the provisions of **Order 3 Rule 2** of the **High Court Act Chapter 27** of the **Laws of Zambia** as read together with **Sections 12** and **31** of the **FPOCA** on

their interest in the property subject of the forfeiture Application by the Applicant.

- 3.25. It was contended that the 2<sup>nd</sup> Interested Party claims interest in one of the properties subject of forfeiture which is named as Sena Plus Investments Limited Premises, Certificate of Title No. 185609 known as Stand No. 20520, Lusaka. The case of **Nachanga Transport v Director of Public Prosecutions**<sup>14</sup> was cited on sufficient interest being the most important issue for consideration as only then can the Court order that the interest shall not be affected by the Forfeiture Order.
- 3.26. The Court of Appeal case **of Johannes Kenneth Siogopi (T/A Nam Transport Co, A Partnership) v Director of Public Prosecutions**<sup>15</sup> was drawn to our attention for the position that documentary evidence showing ownership of property establishes interest. That the 2<sup>nd</sup> Interested Party has established sufficient interest over the Premises known as Stand No. 20520, Lusaka by way of exhibiting Certificate of Title which is conclusive proof of ownership.
- 3.27. Further that the 2<sup>nd</sup> Interested Party was never involved in the commission of any alleged offence, which has consequently resulted in the Applicant's Application for a Non-Conviction Based Forfeiture Order. That the 2<sup>nd</sup> Interested Party has shown that the Lease of the Premises to the 1<sup>st</sup> Interested Party was entered lawfully before any alleged offence and there is no record to show that the 2<sup>nd</sup> Interested Party had any involvement or knowledge of the alleged criminal activities. Therefore the 2<sup>nd</sup> Interested Party

has discharged its burden on the balance of probabilities to be entitled to the protection provided under **Sections 12 (2) and 31 (2)** of the **FPOCA**.

- 3.28. The 3rd Interested Party's Skeleton Arguments were also filed on 7<sup>th</sup> May, 2025 citing the same Statutory provisions and case law as the 2nd Interested Party. The same will not be repeated for avoidance of monotony.
- 3.29. The case of **Nachanga Transport v Director of Public Prosecutions**<sup>14</sup> was also cited for the position that documentary evidence such as Motor Vehicle Registration Certificate establishes ownership and legitimate interest as does evidence establishing equitable interest.
- 3.30. It was submitted that the 3rd Interested Party has exhibited copies of the White Book and Letter of Sale for the Chattels mentioned in this Application and has therefore established sufficient interest as required under **Sections 12 and 31** of the **FPOCA** over the properties known as Truck Horse, Registration No. 4827, Trailer Registration No. ARC 6223 ZM, Truck and Trailer No. AAA 0485F, Truck Horse No. AA399 NP and Truck and Trailer Registration Bal 4303 ZM which are all subject of forfeiture.
- 3.31. Submitting further, it was stated that 3<sup>rd</sup> Interested Party was never involved in the commission of any alleged offence which would in effect taint his interest in the four Chattels citing the case of **Siagopi (T/A Nam Transport Co, A Partnership) v Director of Public Prosecutions**<sup>15</sup> were the

Court guided that the Applicant is only required to satisfy the Court as to the Applicant's interest in the Property.

- 3.32. The concluding submission is that the 3<sup>rd</sup> Interested Party has successfully claimed the protection provided under **Section 12 (2)** and **31 (2)** of **FPOCA** and prays that the interests of the 3<sup>rd</sup> Interested Party in the subject Chattels shall not be prejudiced by the Non-Conviction Based Forfeiture Order sought by the Applicant.
- 3.33. The 4<sup>th</sup> Interested Party's Skeleton Arguments claiming an interest in the subject Properties was also filed on 7<sup>th</sup> May, 2025. Just like the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties the same statutory provisions and case law were relied on. Again, these will not be reproduced to avoid repetition.
- 3.34. It was submitted that the 4<sup>th</sup> Interested Party innocently entered into a commercial transaction with the 1<sup>st</sup> Interested Party in the normal course of business and only came to learn of the 1<sup>st</sup> Interested Party's Court Proceedings after the Machinery had already been delivered and being used by the 1<sup>st</sup> Interested Party.
- 3.35. A further submission is that the 4<sup>th</sup> Interested Party has laboured to exhibit various pieces of proof of ownership of the mentioned chattels as attached in the Affidavit in Support of Claim thereby establishing sufficient interest as per the requirements of **Sections 12** and **13** of the **FPOCA** over the Machinery which are subject of the Forfeiture Application.

- 3.36. It was contended that the 4<sup>th</sup> Interested Party imported the properties into Zambia and was never involved in the commission of any alleged offence which would in effect taint its interest in the said chattels. It was submitted that the 4<sup>th</sup> Interest Party has attached copies of the White Books, a copy of the Customs Freight Manifest confirming that prior to the execution of the Hire Agreement, the machinery was in the possession of the 4<sup>th</sup> Interested Party and other various supporting documentation all alluding to the fact that the 4<sup>th</sup> Interested Party is the bonafide legal owner of the aforementioned properties.
- 3.37. It was finally submitted that the 4<sup>th</sup> Interested Party has discharged its evidential burden and has provided sufficient evidence of his legal interest in the two Folk Lifters Serial Numbers TS2510002-106 and 4C 571504Z072 with Registration No. G, a Front Loader with Model No. ZL 304 DL 377371-2023, a Wheel Loader with Model No. ZL 30EID, CLG40030 ECCL, a Sino Rigid Truck and Trailer bearing Registration No. AA049SF and Wood Misers which were transported from Mozambique and leased to the 1<sup>st</sup> Interested Party prior to the commencement of Proceedings and acquired within the confines of the law.
- 3.38. The Applicant filed Skeleton Arguments in Opposition to the 2<sup>nd</sup> Interested Party's claim to property on 15<sup>th</sup> May, 2025 the gist of which is that the Affidavit evidence relied upon by the 2<sup>nd</sup> Interested Party is legally incompetent, factually unreliable and incapable of rebutting the presumption of

tainted property as provided for under the applicable Forfeiture regime.

- 3.39. The Applicant submits that it is trite law that a Donee of a Power of Attorney can not competently depose to matters relating to the knowledge, intent, or actions of the principle which occurred prior to the execution of the Power of Attorney, unless such knowledge is clearly stated to have been independently acquired and the source of that knowledge disclosed. That in Paragraphs 4 to 9 of his Affidavit, Mr. Ji Rong Li, purports to assert facts that allegedly occurred before 30<sup>th</sup> April, 2024, the date on which he was granted the Power of Attorney. That the Paragraphs are legally defective as they contain no indication of how he came to possess such knowledge and therefore are inadmissible hearsay.
- 3.40. Further that, the Affidavit is rendered defective by the failure of Mr. Ji Rong Li to state his trade or profession, contrary to mandatory procedural requirements under the law which omission goes to the credibility and admissibility of his evidence.
- 3.41. It is contended that the Lease relied upon was signed on 1<sup>st</sup> September, 2024, yet the authority under which Mr. Ji Rong Li purports to have acted was only granted on 30<sup>th</sup> April, 2025. That it is inherently illogical for him to proffer any competent testimony on a document predating his legal authority especially in the absence of a disclosed evidentiary basis. That the timing is significant because the Lease purports to commence on 1<sup>st</sup> January, 2025, yet

investigations into the unlawful activities on the properties were conducted as far back as October, 2024. That the Lease Agreement was never disclosed during investigations but only surfaced after the Forfeiture Application had been initiated. Further that such belated introduction of key material raises serious questions as to its authenticity and strongly suggests an afterthought grafted to defeat the forfeiture claim.

- 3.42. It was submitted that the Applicant conducted investigations at the Department of Immigration and obtained a formal statement from a Senior Officer indicating that Mr. Juan Rao had entered and exited Zambia in 2020 and there was no record of re-entry since then. We were urged to find that Mr. Juan Rao could not have been physically present in Zambia to execute the Power of Attorney dated 30<sup>th</sup> April, 2025. That the foundational document conferring authority upon Mr. Ji Rong Li is at best doubtful and at worst a fabrication.
- 3.43. A further submission is that Records from Zambia Revenue Authority confirm that Mr. Juan Rao is not registered for any Tax type and has never paid rental income Tax which undermines any claim of a legitimate income generating Lease arrangement in respect of the property.
- 3.44. The final submission in respect of the 2<sup>nd</sup> Interested Party is that he had failed to discharge the evidentiary burden required to establish a lawful interest in the Property. That on the contrary, the documents relied upon are suspect, improperly introduced, or legally inadmissible.

- 3.45. The Applicant also filed Skeleton Arguments in Opposition to the 3<sup>rd</sup> Interested Party's claim of interest on 15<sup>th</sup> May, 2024. The gist of the arguments is that the Affidavit sworn by Mr. Eric Lungu is incurably defective in form and substance and that the evidence relied upon in these Proceedings is insufficient, inconsistent and in some respects inadmissible. **Order 5 Rule 11 to 20** of the **High Court Act** was cited as setting out in considerable detail the rules applicable in taking affidavits, the contents of affidavits and the form in which they are supposed to be presented. **Order 41** of the **Supreme Court** was adverted to for similar effect and the consequences for any deviation from the prescribed form.
- 3.46. It is contended that in Paragraph 6 of his Affidavit, Mr. Lungu claims to have rented out the Truck bearing Registration No. AA1490SF on 10<sup>th</sup> May, 2024, yet at Paragraph 6, he asserts that he only acquired ownership of this vehicle 10 days later on 20<sup>th</sup> May, 2024. That one can not Lease out what he does not yet own and this glaring chronological contradiction strikes at the core of his claim and renders the alleged Rental Agreement exhibited as **"EL1"** inherently implausible.
- 3.47. A related submission is that the Rental Agreement is incomplete as it bears only the typed name "*Eric Lungu*" without a signature and is not countersigned by any representative of the purported Rental Company, Donkey Transport. Additionally, that there is no evidence that Donkey Transport is a registered company in Zambia nor is

there proof tendered of the 3<sup>rd</sup> Interested Party's connection to it as he does not identify himself a director, employee or authorised agent of the said entity. That the absence of a signature and company details renders the agreement legally unenforceable and evidentially worthless.

- 3.48. It was submitted that the 3<sup>rd</sup> Interested Party relies on a foreign Sale Agreement allegedly executed in Mozambique with a Mr. Mario Alberto Jose and which document has not been authenticated in accordance with the **Authentication of Documents Act, Chapter 75** of the **Laws of Zambia**. That the unauthenticated sale agreement is therefore inadmissible and incapable of proving ownership.
- 3.49. That the 3<sup>rd</sup> Interested Party purports to have paid US\$22,000.00 for the Vehicle in question yet he had not produced any proof of payment such as Bank Transfer, cash receipt or acknowledgment from the seller. That the Court can not therefore be asked to accept, a bare assertion, that such significant sum changed hands without documentary trial.
- 3.50. Our attention was drawn to **Section 11** of the **Road Traffic Act No. 11 of 2002** which prohibits the use of unregistered vehicles on public roads and mandates registration within 14 days of importation. That the 3<sup>rd</sup> Interested Party has provided no evidence of importation, registration, licencing or insurance for the vehicle. Further that the use, or purported rental of unregistered vehicles is not only illegal but undermines the legitimacy of his claim of ownership.

- 3.51. It was submitted that the Hire Agreement now relied upon was never disclosed at any point during the investigations which were conducted in October, 2024. Additionally, that the Agreement covering the period May to June, 2024, had long expired by the time the Trucks were impounded and the logical inference is that the document was drafted post facto to bolster a claim that did not previously exist.
- 3.52. Regarding Exhibit "**EL3**" said to be a computer print out from RTSA, it was contended that the same had not been certified by the issuing authority as required under **Order V, Rule 9** of the **High Court Rules** on admissibility of public records. That the failure to obtain certification is fatal as held by this Court in the case of **the Director of Public Prosecutions v In Re Property proposed Subdivision of Subdivision F/2303/ 4<sup>th</sup> Street, Ibex Hill, Lusaka; Farm 4301/313 Eureka Baob Area, Musekese Drive, Lusaka; part of F/181A/C/1 Mungwi Road, Lusaka West; 10 x49 Inch Samsung Television set, K48, 458.00; K90,000.00; 107.00 United States Dollars; 100 Pounds; 1 Yen; and 10,000.00 United States Dollars<sup>16</sup>.**
- 3.53. In respect of the Trailer Registration No. ARC 6223Z, it was submitted that no evidence has been provided to establish ownership of the same. That this Trailer together with the other Trucks were found within the premises of Sena Plus Investment Limited where they were used to ferry illegal harvested forest produce.
- 3.54. The Applicant submitted that the Manager of Sena Plus, Mr. Wang Xue Xi, never mentioned any Rental Agreement with

the 3<sup>rd</sup> Interested Party. That on the contrary, his concern was limited to the legality of the documentation accompanying the forest produce and his silence on any Hire Agreement casts further doubt on the credibility of the 3<sup>rd</sup> Interested Party's assertions. Further that the cumulative effect of inconsistencies, inadmissible evidence, lack of documentation, and suspicious timing of disclosure fatally undermines the claim by the 3<sup>rd</sup> Interested Party.

- 3.55. The concluding submission is that the 3<sup>rd</sup> Interested Party has failed to discharge the evidentiary burden of proving ownership or innocent involvement. That the Applicant respectfully invites this Court to find that the 3<sup>rd</sup> Interested Party's Affidavit and accompanying documents do not meet the legal threshold to sustain an interest under the **FPOCA** and to dismiss the claim.
- 3.56. The Applicant filed Skeleton Arguments in response to the 4<sup>th</sup> Interested Party's Application for Declaration of Interest on 6<sup>th</sup> June, 2025. The gist of the arguments is that a person claiming an interest in the Property subject of a Forfeiture Application is required to appear before Court and produce evidence demonstrating that they have sufficient interest in the Property as provided for in **Section 30** of the **FPOCA** and meeting the threshold of proof of interest as required under **Section 31 (2)** of the **FPOCA**.
- 3.57. According to the Applicant, the question that arises in this Application is whether the 4<sup>th</sup> Interested Party, Kai Hong

Sociedade Unipessoal Limitada, has demonstrated interest that meets the threshold. That in the 4<sup>th</sup> Interested Party's attempt to prove sufficient interest, the Deponent, Wang Kai Hong has:

- a) *made a claim to be a Director of Kai Hong Sociedade Unipessoal Limitada, while the document exhibited does not show that fact;*
- b) *exhibited a Hire Purchase Agreement that is defective with doubtful legitimacy;*
- c) *exhibited documents that are not duly authenticated or certified; and*
- d) *failed to exhibit any document showing proof of ownership and a Lease Agreement in relation to the Wood Miser.*

3.58. Elaborating further, the Applicant states that a careful perusal of the Certificate of Incorporation exhibited by the Deponent in the capacity of Director of Kai Hong Sociedade Unipessoal Limitada reveals that there is only one shareholder and director of Kai Hong Sociedade Unipessoal Limitada by the name of Xiang Rong Li. That therefore the Deponent does not have capacity to swear the Affidavit on behalf of the 4<sup>th</sup> Interested Party as purportedly done. Further, that this indicates that the Deponent is dishonest and is intent on misleading this Court on his capacity to swear the Affidavit and his knowledge of the facts and ownership of the Properties subject of this Application.

- 3.59. In respect of the exhibit marked **“WHK2”** showing that the 4th Interested Party is an innocent Lessor of 2 Folk Lifts Serial Numbers TS2510000 and 25/10002, Front Loader Model No. ZL 30E DL (Serial No. 377371-2023), Wheel Loader Model No. ZL 30E; and 2 Trucks Registration Numbers AAA485F and AAA0495F, it was submitted that a careful perusal of the purported Hire Agreement indicates that there is no date or place of execution of the same making its legitimacy questionable.
- 3.60. Further that all the items mentioned above are indicated on the list which is not referenced in the Agreement itself and neither is it signed by any of the Parties to the same. That there is a likelihood of the list being generated and attached after the execution of the Agreement making it questionable.
- 3.61. It was submitted that curiously, the Deponent signed the purported Agreement as legal representative of Kai Hong Company (presumably Kai Hong Sociedade) (“the Lessor”). That the Deponent, not being a Director of Kai Hong Sociedade Unipessoal Limitada, has failed to demonstrate that he was appointed as legal representative of the said company for purposes of execution of the purported Hire Agreement.
- 3.62. A related surprising submission according to the Applicant is that Xiang Rong Li who is the sole Shareholder and Director of Kai Hong Sociedade Unipessoal Limitada signed the Hire Agreement as the Legal Representative of Sena Plus Investments (“the Lessee”) clearly contradicting

himself as he has exhibited a document showing that Li Xiang Rong Li is the Director of Kai Hong Sociedade Unipessoal Limitada yet Xiang Rong Li executed the Hire Agreement as legal representative of the Lessee.

- 3.63. An additional submission is that the Hire Agreement was never disclosed during the course of investigations and has only surfaced many months after the Forfeiture Application had been served. That such belated instructions and the contradictions alluded to above raise serious questions as to the authenticity of the Hire Agreement and strongly suggests it is an afterthought crafted to defeat the Forfeiture claim.
- 3.64. Regarding authentication of documents, it was submitted that for any documents executed outside Zambia to be admissible, it must be done in accordance with **Section 3** of the **Authentication of Documents Chapter 75** of the **Laws of Zambia**. Additionally, that documents as defined under **Section 2** of the **Authentication of Documents Acts** refers to any Deed, Contract, Power of Attorney, Affidavit or other writing excluding an Affidavit sworn before a Commissioner of the High Court. Further that authentication is defined under this Act as the verification of any signature or signatories on a document. **Black's Law Dictionary** was also relied on for the definition of authentication.
- 3.66. It was noted that the Deponent has exhibited a Certificate of Incorporation which document has not been signed by the issuing entity to show its legitimacy and neither is it

certified as a true copy nor is it authenticated in accordance with the **Authentication of Documents Act**.

3.67. A further submission is that the purported proof of ownership of Folk Lifts Serial No. TS2510002-106 and 4C571504Z072 (**“WKH3”**), the White Book for a Wheel Loader Model No. ZL 30EID No. CLG 40030 ECCL (**“WKH4”**) and the purported copy of the White Book for the Truck Registration No. AAA 0495F (**“WKH5”**) have all not been certified as true copies of the originals by the issuing entities as they are public documents and neither have they been authenticated in accordance with the **Authentication of Documents Act**. Further that the exhibit marked as **“WKH5”** does not indicate that Kai Hong Sociedade Unipessoal Limitada is the registered owner of the Truck bearing Registration No. AA0495F.

3.68. In relation to the Customs Road Manifest (**“WKH6”**), it was submitted that though it has a provision for certification, it has not been certified and neither does it bear any entries by Customs at the point of entry or exit. The Applicant cited the case of the **Director of Public Prosecutions and Proposed Subdivision of Subdivision F/2303/Q 4<sup>th</sup> Street, Ibex Hill, Lusaka, Farm 430/313 eureka Baobab Area Musekese Drive, Lusaka, part of Farm C/1/1181a, Mungwi Road, Lusaka West, 10X 49 Inch Samsung Television Sets, K48,458.00, K90,000.00, 107.00 United State Dollars, 100 Pounds, 1 Yen, 10,000.00 United States Dollars**<sup>16</sup> where this Court expunged several

Paragraphs of the Applicant's Affidavit for want of certification of data messages and public documents.

- 3.69. It was contended that the Customs documents marked **"WHK7"** purportedly issued by the Zambia Revenue Authority are public documents that were generated as print outs from the online system. That consequently they are data messages which must meet the threshold with respect to production under **Section 9 (1) (4)** of the **Electronic and Communications Transaction Act No. 4 of 2021**. That the same being data messages were not certified to be correct by an officer from the Zambia Revenue Authority.
- 3.70. Regarding ownership of the Wood Miser exhibited as **"WKH6"**, it was argued that the Deponent did not produce any documentation to prove the assertion save for a Customs Road Freight Manifest. That notably, the said Manifest indicates the exporter of the Wood Miser as Bocose Import & Export Trading Tete, Mozambique and not Kai Hong Sociedade Unipessoal Limitada contrary to what the Deponent would like this Court to believe.
- 3.71. Concluding on the arguments, the Applicant submitted that the effect of the inconsistencies, inadmissible evidence, lack of documentation and suspicious timing of the disclosure of the purported Hire Agreement totally undermines the 4<sup>th</sup> Interested Party's claim of interest. The Court was invited to find that the Affidavit and accompanying documents on behalf of the 4<sup>th</sup> Interested

Party do not meet the legal threshold to sustain an interest under the **FPOCA**.

#### **4.0. THE HEARING**

- 4.1. At the hearing held on 10<sup>th</sup> June, 2025, Ms. Martha L. Luhanga on behalf of the Applicant placed reliance for the Application on **Order 30 Rules 15 and 17** of the **High Court Act Chapter 27** of the **Laws of Zambia** and on the Skeleton Arguments referred to above.
- 4.2. In augmenting, Ms. Luhanga submitted that the Properties cited in the Application are tainted as they contravene the provision of the **FPOCA**. That aside from the properties being tainted, the Interested Parties have not demonstrated sufficient interest in the said Properties as the documents in the Affidavits in Support of Declaration of Interest are defective not having been duly authenticated. Further that the documents relating to ownership do not appear legitimate for reasons advanced by the Applicant in tis Affidavit in Support of the Application.
- 4.3. Finally, that a perusal of the exhibits produced by the Interested Parties indicates a vicious attempt by them to mislead the Court by producing documents whose authenticity is questionable and not properly before Court. The submission therefore was that the Interested Parties have not demonstrated sufficient interest in the Properties cited in the Forfeiture Application and that the said Properties being tainted, ought to be forfeited to the State.

- 4.4. Mrs. Chitundu, also on behalf of the Applicant, submitted that the Properties in issue are tainted because of the offences cited in support of the Application. That this is because logs just like human beings have identity numbers called hammers marks and when these logs were found, without hammer marks, that was an offence. Further, that when the 1<sup>st</sup> Interested Party was asked, they failed to account for them although a few logs had hammer marks and the co-mingling with those that had none was an offence.
- 4.5. It was Mrs. Chitundu's submission that having committed that offence, the premises, implements and everything relating to this business became tainted by virtue of the Logs which they were trading in. We were invited to take Judicial Notice that illegal trade in Mukula and Rosewood has become rampant in Zambia and Courts have a duty when such cases come before them to send a strong and deterrent message. That this will be achieved by forfeiting the Logs and any instrumentality attached to the illegality, to deter would be offenders from engaging in such activities and to show that crimes does not pay. Further that if the Logs and instrumentalities are not forfeited, this would promote the notion that crime pays and that the wrong doers should continue engaging in such illegal activities.
- 4.6. Mrs. Chitundu made reference, without specifying, to cases both at home and abroad where instrumentalities such as vehicles and premises have been forfeited to take away profit from crime. That as the Court is considering the correct

pronouncement on this Application, it must be alive to the impact of the offences such as these on the environment, economy and future generations.

- 4.7. On behalf of the Interested Parties, Mr. Mushokabanji placed reliance on the documents filed by the 1<sup>st</sup> to the 4<sup>th</sup> Interested Parties. In augmenting, he stated that the onus to show that the Properties that are subject to forfeiture are proceeds of crime and tainted lies at all times on the Applicant.
- 4.8. Mr. Mushokabanji submitted that a perusal of the Originating Application for Non-Conviction Based Forfeiture Order, particularly the Affidavit in Support has not shown evidence in whatever manner or form to show that the Properties subject of forfeiture have been derived from a criminal activity as alleged. That what the particular Affidavit shows is evidence of an alleged offence which was committed by the 1<sup>st</sup> Interested Party which offence falls short of the definition of a serious offence as provided by the **FPOCA**.
- 4.9. He further argued that to claim that the said Properties are tainted on mere allegations of offences that are not serious, with lack of evidence to show that the 1<sup>st</sup> Interested Party was able to derive benefits from the sale of the purported Logs, would be unjust in this instance.
- 4.10. It was submitted that a perusal of the Affidavit in Opposition sworn by the 1<sup>st</sup> Interested Party will show that the 1<sup>st</sup> Interested Party is the owner of a company duly registered

in accordance with the **Companies Act** to trade in Logs. That the 1<sup>st</sup> Interested Party had produced documents showing sufficient interest before this Court of various suppliers who sold the Logs to him using proceeds which he had shown in his Affidavit contrary to what the Applicant is alleging.

4.11. With regard to the 2<sup>nd</sup> to 4<sup>th</sup> Interested Parties, the submission was that they have produced evidence which shows their legitimate interests in the Properties subject of the Forfeiture Application. That the particular interests shown by the 2<sup>nd</sup> to the 4<sup>th</sup> Interested Parties is that the Properties were acquired way before the alleged offence was committed and that the Applicant has not shown by presenting evidence, how these particular Interested Parties derived the said Properties from the alleged offences. That the Applicant has failed to show any connection or knowledge or indeed that they were aware or had knowledge of any illegality that was being committed by the 1<sup>st</sup> Interested Party, if any, and their only fate is that, just like any other person, they did engage in business with the 1<sup>st</sup> Interested Party.

4.12. It was submitted that it would be unfair to forfeit the Properties in the absence of evidence showing that the Interested Parties took part in the alleged commission of an offence or that the Properties were derived from activities involving crime as alleged by the Applicant. That the Applicant has failed to show before Court how the Properties

are tainted and why they should be subject of forfeiture depriving the Interested Parties of their right to property.

- 4.13. Mr. Mosha also on behalf of the Interested Parties, submitted that the Record will show that there is a paper trail speaking to acquisition of the Logs. That while the State contends that the crime or misdeed upon which the Application is predicated are the Logs which were not hammer marked, their simple position is that this allegation under the **Forest Act** is a misdemeanor. That Mr. Mosha can only liken what the State is trying to do to a person having a vehicle forfeited because he does not have a driving licence or has not paid Road Tax.
- 4.14. It was submitted that the Court should take Judicial Notice of the paper trail speaking to acquisition. That it comprises documents issued by the Government of the Republic of Zambia indicating how the Logs came from the Forest to the Interested Party's door steps and unless the State can demonstrate that these are forgeries, then the State itself is complicit in the acquisition of the Logs by the 1<sup>st</sup> Interested Party. That in a nutshell, the entire case as presented by the State is speculative as no tangible evidence has been produced to show that the Property is tainted.
- 4.15. Finally, that Counsel for the Applicant went to great lengths to demonstrate that the equipment is also tainted but she neglected to show how this equipment was used in the commission of the alleged crime upon which the entire Application for Forfeiture is predicated.

- 4.16. In Reply, Mrs. Luhanga stated that the Properties cited herein are tainted as not only do they offend the **FPOCA**, which as has been pronounced by Superior Courts and also aptly stated in the **FPOCA** itself, is a serious offence. According to Ms. Luhanga, there is a plethora of authorities including the case of **The People v Charity Katanga**<sup>17</sup> which clearly shows or states that properties used as instrumentalities in the commission of crime are serious offences and are liable for forfeiture to the State. That the equipment and premises cited in the Application were used as instrumentalities to commit the offence cited herein.
- 4.17. Regarding the Logs subject of the Forfeiture Application, it was submitted that the same, despite Counsel for the Interested Parties alleging that they were legitimately acquired, were mixed with other Logs not hammer marked in clear breach of the provisions of the **Forest Act**. That the cited Logs, Vehicles and Equipment together with the Premises cited in the Forfeiture Application are tainted Property and liable for Forfeiture to the State. Additionally, that as the 2<sup>nd</sup> to the 4<sup>th</sup> Interested Parties have failed to demonstrate sufficient interest in the Properties, it is inconsequential that they were acquired before the offence cited herein were committed.
- 4.18. Mrs. Chitundu also in Reply, submitted in relation to there being, a paper trail that the Affidavit in Support of Application and Skeleton Argument show that there were over 2000 Logs and except for a few hammer marked ones, there was absolutely no proper trail for the Logs.

- 4.19. In relation to the premises, the vehicles and equipment being used in the commission of the offence, she submitted that these are instrumentalities and are connected to the illegality in that the Trucks were being used to carry the illegal Logs. That the premises became an instrumentality and tainted because this is where the illegal activities were being conducted.
- 4.20. Further, that without this factory, the illegality would not have had a place to be conducted from. The submission therefore was that they were instrumentalities which should be forfeited as has been held in a plethora of authorities.
- 4.21. It was submitted further that, the Folk Lifter and Loaders were also an instrumentality because without them, the Logs would not have been lifted and loaded at all. That they were all vital instruments to the illegality being conducted. Further that it was because of this that the State was applying that the Premises, Vehicles and all Equipment used in the transactions are tainted and should be forfeited to the State to send a strong deterrent message that people must not allow their vehicles, properties or instruments to be used in illegal activities because the Courts will forfeit to the State.

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

- 5.1. We have considered the Application and perused the Parties respective Affidavits and exhibits thereto. Further, we have considered all the submissions made by the Applicants and

the Interested Parties' Advocates and the authorities cited, for which we are grateful.

- 5.2. This matter was commenced by way of Originating Notice of Motion as an Application for an Order of a Non-Conviction Based Forfeiture of Tainted Properties made pursuant to **Sections 29** and **31** of the **FPOCA** which are couched as follows.

***“29. A Public Prosecutor may apply to Court for an Order forfeiting to the State all or any other property that is tainted property”.***

***“31. (1) subject to Subsection (2), where a Public Prosecutor applies to the Court for an Order under this Section and the Court is satisfied on a balance of probabilities that the property is tainted property, the Court may Order that the property, or such of the property as is specified by the Court in the Order, be forfeited to the State.***

***(2) Where a person claiming an interest in property to which an application relates satisfies the Court that the person-***

***(a) has an interest in the property; and***

***(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and-***

*(i) had the interest before any serious offence occurred; or*

*(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property,*

*The Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question”.*

- 5.3. From the provisions above, it is discernible that all that is required of the Public Prosecutor to institute an Application for forfeiture is sufficient belief that the property is tainted. Thereafter, any person who claims an interest in the property in respect of which the Application is made may appear and produce evidence of such interest.
- 5.4. The evidence on Record is that Four (4) Interested Parties have come forward to lay a claim of their respective interests in the Properties subject of the Application. It behoves the Court as a first step to determine whether the Applicant has proved that the properties herein are tainted on the basis that they are reasonably suspected to be proceeds of a crime.
- 5.5. **Section 33 (2) (b)** of the **FPOCA** sets out the rules of evidence applicable in Civil Proceedings such as this one in the following terms:

***“The rules of evidence applicable in civil proceedings apply, and those applicable only to criminal proceedings do not apply to proceedings under this Act”.***

- 5.6. Further in **Section 34**, the **FPOCA** casts the onus on the Applicant to prove the case as follows:

***“The Applicant in any proceedings under this Act bears the onus of proving matters necessary to establish the grounds for making the order applied for”.***

- 5.7. Having set out the above provisions as a guide, we now turn to consider whether the Applicant has proved, to the required standard, that the specified Mopane Logs, Mukwa Logs, Mupapa Logs, 40 Planks, Folk Lifters, Wood Misers, Sena Plus Limited Premises, Truck Horses and Trailers, Wheel Loader and Front Loader, which are all subject of this Application are tainted Properties.

- 5.8. By **Section 2** of the **FPOCA**, tainted property is defined in the following terms:

***“‘Tainted Property’ in relation to a serious offence or foreign serious offence means***

***(a) Any property used in, or in connection with the commission of an offence;***

***(b) Property intended to be used in or in connection with the commission of the offence; or***

***(c) Proceeds of the offence; and when used without reference to a particular offence***

***means tainted property in relation to serious offence”.***

- 5.9. Quiet clearly from the foregoing, if the Properties are tainted properties, they are tainted in relation to a serious offence. According to **Section 2** of the **FPOCA** a serious offence is one in which the maximum sentence provide by the law is death or imprisonment for not less than 12 months.
- 5.10. Further, in relation to the offence of **Being in Possession of Property reasonably Suspected to be Proceeds of Crime** provided for under **Section 71 (1)** of the **FPOCA**, the Supreme Court decision of the **People v Austine Liato**<sup>11</sup> is instructive that:

***“To prove reasonable suspicion under Section 71 (1) of the Act, therefore, the Prosecution does not have to show the link between the source of the money or the accused to possible criminal conduct. It is sufficient that possession and reasonable suspicions are proved.”***

- 5.11. In another case of **The Director of Public Prosecutions v In Re Property and Dhiraj Dhumputha as the Interested Party**<sup>4</sup>, the Court held that:

***“Whether or not there is a criminal prosecution or conviction, it does not affect the case of recovery of assets reasonably believed to be proceeds of crime. A Non- Conviction Based Forfeiture can run parallel with a criminal trial”.*** (our emphasis)

- 5.12. The import of the above authorities is that Non- Conviction Based Forfeiture Proceedings permit the Court to Order Forfeiture of assets derived from activities of a criminal

nature, even where no conviction has been obtained in relation to criminal conduct.

- 5.13. To demonstrate that the Properties subject of this Application as indicated in Paragraph 5.7 above are tainted, the Applicant alleges that the Properties were found on 29<sup>th</sup> October, 2024, at the premises of the 1<sup>st</sup> Interested Party, a company dealing in Logs and Timber. That a team of Investigators discovered a lot of unmarked timber mixed with marked timber, machinery used to cut the Logs and also Trucks used to transport the Logs.
- 5.14. It is further alleged that the 1st Interested Party was formally arrested and charged for the offence of **Illegal Possession of Forest Produce** contrary to **Section 89** as read with **Section 99** of the **Forest Act No. 4 of 2015** of the Laws of **Zambia** and the offence of **Mixing of Marked Forest Produce and Unmarked Forest Produce** contrary to **Section 92** as read with **Section 99** of the **Forest Act No. 4 of 2015** of the **Laws of Zambia**. The Sections in this Paragraph are couched as follows:

*“89. A person who knowingly receives or is in possession of any produce in respect of which an offence has been committed commits an offence”.*

*“92. A person who willfully mixes forest produce marked by the Department with unmarked produce contrary to the provisions of this Act commits an offence”*

**“99. A person who commits an offence under this Act for which a penalty is not provided is liable upon conviction –**

**(a) If the offence was committed within or in connection with, a forest area, to a fine not exceeding One Hundred Thousand Penalty Units or to Imprisonment for a term not exceeding two years or to both; and**

**(b) In all other cases, to a fine not exceeding Thirty Thousand Penalty Units or to imprisonment for a term not exceeding six months or to both.**

5.15. By **Section 71 (1)** of the **FPOCA**,

**“A person who, after the commencement of this Act receives, possesses, conceals, disposes of or brings into Zambia any money or property, that may reasonably be suspected of being proceeds of crime commits an offence and is liable upon conviction to**

**–**

**(a) If the offender is a natural person, imprisonment for a period not exceeding five years;**

**(b) Or if the offender is a body corporate, a fine not exceeding Seven Hundred Penalty Units”.**

5.16. The 1<sup>st</sup> Interested Party does not dispute the fact that the marked Logs were mixed with the unmarked Logs found at

its premises. The contention however, is that the offences which are suspected to have been committed by the 1<sup>st</sup> Interested Party and the punishment or penalty provided do not fall under **Section 99 (a)** as they were not committed within, or in connection with a forest area.

5.17. The related submission is that the punishment for these suspected offences is found under **Section 99 (b)** which calls for a punishment not exceeding Thirty Thousand Penalty Units or to imprisonment not exceeding six months or to both. That therefore, since the punishment which can be meted for the suspected offences attracts a fine or imprisonment for a term not exceeding six months, the cited Properties can not be forfeited as the offences fall outside the ambit of tainted property capable of being forfeited under the **FPOCA**.

5.18. In a nutshell, the 1<sup>st</sup> Interested Party's position is that while the State contends that the crime or misdeed upon which the Application is predicated are Logs which were not hammer marked, the offence under the **Forest Act** is a misdemeanor which can be likened to forfeiture of a motor vehicle simply because the driver does not have a Driving Licence or has not paid Road Tax.

5.19. We find the analogy by Counsel of the offences committed by the 1<sup>st</sup> Interested Party herein to that of forfeiting a Motor Vehicle because the driver has no licence or for not having Road Tax rather too simplistic and we are not persuaded by it. To argue that the offences upon which the Application is predicated were not committed within or in connection with

a Forest Area and therefore misdemeanors, in our view, is a statement made without conviction and flies in the teeth of the evidence before us.

- 5.20. We say so because there is evidence before Court that the 1<sup>st</sup> Interested Party is a duly registered company with the object of trading in Logs which are a product of forest areas and therefore connected to forest areas. According to the evidence before Court, the 1<sup>st</sup> Interested Party was only preoccupied with ensuring that the Logs supplied to him had documentation and not whether or not they were hammer marked as required by the Law.
- 5.21. Counsel has gone to great lengths about there being a paper trail in the acquisition of the Logs subject of this Application. Our understanding of a paper trail is that it involves a series of documents, records or evidence that provide an unequivocal chronological record of transactions, events or decisions. In our view the purpose of a paper trail is that it helps to provide a clear and transparent record and therefore to establish accountability and responsibility for actions or decisions as the case may be.
- 5.22. We have scrupulously combed through documents collectively exhibited as “**WX2**” totaling about 226 documents in all. Our analysis is that the documents bear names of various companies and individuals. They include GRZ Receipts, Tree Felling Certificates and Permits, Concession Licences, Forest Conveyance Permits, Certificates of Agreement between Producers and Merchants of Timber and sawn Timber Returns.

- 5.23. On further analysis, we note that none of the numerous documents exhibited make reference to or have any connection with the 1st Interested Party to satisfy us that they are indeed relevant to the activities carried out by the 1<sup>st</sup> Interested Party at the relevant time.
- 5.24. Put in another way, there is no evidence of contracts between the 1<sup>st</sup> Interested Party and any of the entities and individuals whose particulars are on the documents exhibited collectively. Further there is no evidence of Receipts, Cash Transactions, Bank Transfers or any such documents that would establish a link with the 1<sup>st</sup> Interested Party to properly enable it claim existence of a paper trail in the true sense of the phraseology. Our inescapable conclusion is that the 1<sup>st</sup> Interested Party can not, on the state of the evidence supplied, reasonably be heard to argue that it has furnished a paper trail regarding acquisition of the Logs subject of the Forfeiture Application.
- 5.25. Based on our analysis of the provisions of the **Forest Act** referred to in Paragraphs 5.14 above and applying the same to this matter, we are not convinced that the offences of mixing hammer marked Logs with unmarked ones is a misdemeanor as the 1<sup>st</sup> Interested Party would have us believe. The **Forest Act** creates an offence for a person who mixes forest products marked by the Department, with unmarked produce contrary to the provisions of the Act. The fact that the Logs were unmarked suggests that they were harvested without the authority of the Forestry Department.

A perusal of **Section 23 (1)** shows that the cutting and removing of forest produce without a licence or permit is an offence which attracts up to two hundred thousand penalty units fine or 2 years imprisonment or both.

- 5.26. Further, being in possession of Forest Produce in the manner done by the 1<sup>st</sup> Interested Party is a serious offence within the meaning prescribed under **Sections 2** and **71 (1)** of the **FPOCA**, as the offence is punishable by imprisonment of a period exceeding 12 months.
- 5.27. From our analysis of the foregoing provisions and the evidence on Record, we have no hesitation in finding that the Applicant has proved to the required standard that the 1,899 Mopane Logs, 152 Mukwa Logs, 19 Mupapa Logs, 40 Planks were commingled with hammer marked ones and those not marked contrary to the provisions of the **Forest Act No.4 of 2015** of the **Laws of Zambia** making them liable for Forfeiture.
- 5.28. We now turn to consider the issue of the Premises known as Stand No. 20520, Lusaka, where the activities of the 1<sup>st</sup> Interested Party were being carried out from. The Applicant's position is that the Premises are tainted because this is where the unlawful activities were taking place and without these Premises the 1<sup>st</sup> Interested Party would not have carried on the said activities.
- 5.29. The 2<sup>nd</sup> Interested Party through a Donee of a Power of Attorney argues that Jun Rao is the lawful owner of the Property having been granted the Certificate of Title by the Commissioner of Lands on 31<sup>st</sup> July, 2012. In reply the

Applicant's position is that the Donee of the Power of Attorney can not competently depose to an Affidavit to matters relating to knowledge, intent or actions of the Principal which occurred before the Power of Attorney was granted.

- 5.30. We have reviewed the Affidavit in Support of Declaration of Interest sworn by the Donee Ji Rong Li, on behalf of the 2<sup>nd</sup> Interested Party particularly Paragraphs 4 through to 9 which relate to the knowledge, intent and actions of the Principal prior to the grant of the Power of Attorney. Indeed, the Donee does not disclose the source of his knowledge of the matters deposed to that clearly occurred before he was granted the Power of Attorney. This clearly offends the Rules on the contents of an Affidavit as set out in **Order III Rule 16** of the **High Court Rules Chapter 27** of the **High Court Act** couched as follows:

***“Every affidavit shall contain only a statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true”.***

- 5.31. It is evident from this provision that it is couched in mandatory and not discretionary terms. This being the case, the said Paragraphs would be rendered inadmissible. Even assuming that were not the case, a perusal of the exhibit marked **“JRL3”** which is a Rental Contract reveals that it purports to have been executed by the parties on 1<sup>st</sup> September, 2024, for a period of one year commencing on

1<sup>st</sup> January, 2025. The Donee was only granted the Power of Attorney on 30<sup>th</sup> April, 2025.

5.32. The failure to disclose the source of his information of events prior to grant of the Power of Attorney coupled with timings and discrepancies on dates indeed raise doubts at best and at worst appear to be fabrications. More so that the purported Rental Contract was never disclosed by the 1<sup>st</sup> Interested Party at the time the investigations were conducted around 29<sup>th</sup> October, 2024 as the Record shows.

5.33. **Section 12** of the **FPOCA** provides guidance with regard to the rights of third parties claiming an interest in Property subject to Forfeiture Proceedings. This Section provides that:

***“12 (1) where an application is made for a Forfeiture Order against any property, a person who claims an interest in the property may apply to the Court before the Forfeiture Order is made for an Order under Subsection (2)***

***(2) where a person applies to the Court for an Order under this Subsection in respect of the person’s interest in any property and the Court is satisfied that;***

***(a) the Applicant has interest in the Property***

***(b) the Applicant was not in any way involved in the commission of the offence in respect of which the***

***forfeiture of the property is sought, or the forfeiture order against the Property was made;***

***(c) the Applicant-***

***(i) had the interest before the serious offence occurred;***

***(ii) acquired the interest during or after the commission of the offence, bona fide and for fair value, and is not know or could not have reasonably known at the time of the acquisition that the property was tainted property;***

***the Court may make an Order declaring the nature, extent and value as at the time when the Order is made, of the Applicant's interest."***

5.34. We have perused the Certificate of Title exhibited as "JRL2" on behalf of the 2<sup>nd</sup> Interested Party which on the face of it reveals the owner of Stand No. 20520 as the 2<sup>nd</sup> Interested Party indeed. Further, the Interest by the 2<sup>nd</sup> Interested Party was acquired on 15<sup>th</sup> July, 2012, long before the commission of the offences by the 1<sup>st</sup> Interested Party. We do not agree with the Applicant's position, without citing any law, that it is not certified in accordance with the

requirements for public documents and cannot be relied upon.

- 5.35. While it is our considered view that the 2<sup>nd</sup> Interested Party may have met one of the requirements in **Section 12** regarding ownership, it is not automatic that his Application of Declaration of Interest will be granted as prayed. The 2<sup>nd</sup> Interested Party has the burden to establish not only his legitimate interest in the subject Property but also that the Property itself was not used in the commission of the offence by the 1<sup>st</sup> Interested Party.
- 5.36. We found guidance in the cases of **Nachanga Transport v The Director of Public Prosecutions**<sup>14</sup>, **National Director of Public Prosecutions v Engels**<sup>1</sup> and **Elvis Haatila and J. Yumba General Dealers v The Director of Public Prosecutions**<sup>13</sup> that the Court is obligated to assess whether the Property in this case, Stand No. 20520, Lusaka was used as a facilitation/conduit/instrumentality in the commission of the offences leading to this Application.
- 5.37. In evaluating the role of the Premises in the commission of the offence, we have necessarily considered the proximity and the unlawful business conducted by the 1<sup>st</sup> Interested Party of commingling marked and unmarked Logs. From the evidence before us, there exists an inextricable nexus between the Premises and the unlawful activities that were taking place there.
- 5.38. We agree with the Applicants that the Premises became an instrumentality and tainted because this is where the unlawful activities were being conducted and without which

the enterprise would not have proceeded. We are not satisfied by the feeble claim of innocence by the 2<sup>nd</sup> Interested Party that the Premises can escape Forfeiture as envisioned in **Section 12** of the **FPOCA**.

5.39. We now turn to the 3<sup>rd</sup> Interested Party's claim of interest that he is the lawful owner of the Motor Vehicles and/or Trucks listed among the assets hired to the 1<sup>st</sup> Interested Party in the normal course of business operations. Specifically, the 3<sup>rd</sup> Interested Party lays claim on Truck Horse Registration No. AAI 490 SF and Trailer Registration No. 399 NP as evidenced in the Sale Agreement executed with the previous owner, Mr. Alberto Jose exhibited as **"EL2"**.

5.40. Further, the 3<sup>rd</sup> Interested Party claims ownership of Truck Registration No. BAL 4303ZM though he has not produced proof of ownership purportedly because he could not find the White Book. Finally, he claims ownership of Truck Horse Registration No. ARC 4827 and Trailer Registration No. ARC 6223Z and has exhibited its White Book as **"EL3"**.

5.41. The 3<sup>rd</sup> Interested Party's position is that he entered into a Lease Rental Agreement marked **"EL1"** with the 1<sup>st</sup> Interested Party to Lease the aforementioned Motor Vehicles and did not at any point authorize the 1<sup>st</sup> Interested Party to use the Motor Vehicles for the alleged illegal activities which he had no knowledge of.

5.42. We have analysed the Truck Rental Agreement marked **"EL1"** and established that it is was entered into by Donkey

Transport and the 3<sup>rd</sup> Interested Party signed as the Director. The provision for the other party, that is to say, the Lessee Company, was not signed. There is no provision in the Agreement that it could be signed in counterparts to perfect it. As it stands, it is a one-party agreement as far as we can see.

- 5.43. We further note that there is no evidence indicating that Donkey Transport is a registered company in Zambia or elsewhere and also no evidence of the relationship between the purported company and the 3<sup>rd</sup> Interested Party either as director, employee or authorized agent to execute the same on behalf of the company. The Agreement merely reflects the 3<sup>rd</sup> Interested Party's name in letters as Director without any signature on the document
- 5.44. The other note-worthy aspect regarding the Truck Rental Agreement is the rental period appearing at *Clause 3* as commencing on May, 2024, until June, 2024, unless terminated earlier. What this means is that at the time of conducting investigations in the activities of the 1<sup>st</sup> Interested Party who purportedly hired the Trucks, this Truck Rental Agreement had expired.
- 5.45. Given the glaring discrepancies as pointed out in the three preceding Paragraphs above, we are unable to attach any meaningful weight to the purported Truck Rental Agreement.
- 5.46. In respect of the Sale Agreement exhibit "**EL2**" relating to Truck Registration No. AA1 490 SF and Trailer No. AA 399 NP, our analysis shows that the same is said to have been

executed by Mr. Alberto Mario Jose of Beira, in Mozambique as the Seller and the 3rd Interested Party and that the cost was the amount of USD22,000.00. It is not stated whether the Sale Agreement was executed in Zambia or in Mozambique but what is certain is that the Truck and Trailer bear foreign Registration Numbers. The 3rd Interested Party has also not shown any proof of payment by way of bank transfer, cash receipt or at the very least any acknowledgment of receipt by the seller.

- 5.47. In the result we are not able to make a conclusive finding that the Truck and Trailer claimed by the 3rd Interested Party are truly owned by him.
- 5.48. As regards **“EL3”** the White Book for Truck Horse Registration No. ARC 4827 ZM relied upon by the 3rd Interested Party, our perusal of this reveals that the owner is indicated as Eric Lungu, the 3rd Interested Party herein. On the strength of the case of **Nachanga Transport v The Director of Public Prosecutions**<sup>14</sup> that documentary evidence such as Motor Vehicle Certificate establishes ownership and legitimate interest, we are satisfied that the 3rd Interested Party is the registered owner of the said Motor Vehicle.
- 5.49. The 3rd Interested Party has not provided any evidence that he is the lawful owner of the Truck and Trailer Registration No. BAL 4303 ZM claiming that the White Book could not be found at the time of swearing his Affidavit. Conversely, on the authority of the **Nachanga case** above, we have not

found any evidence that the 3<sup>rd</sup> Interested Party owns the Truck and Trailer aforesaid and therefore not established his interest in the same.

- 5.50. On our analysis of what has been claimed as an interest by the 3<sup>rd</sup> Party, the only claim of ownership to our satisfaction is that of the Sino Truck Registration No. ARC 4827 ZM registered on 5<sup>th</sup> April, 2024. But the matter does not end there in relation to claims by the 3<sup>rd</sup> Interested Party as set out in **Section 12** of the **FPOCA**. The Applicant has argued that this Truck, among others, was used as an instrumentality in the illegal activities by the 1<sup>st</sup> Interested Party. The 3<sup>rd</sup> Interested Party on the other hand argues that he had, in place, a Truck Rental Agreement entered into in the normal course of business without any knowledge of any criminal activities associated with the Trucks.
- 5.51. As pointed out earlier, the said Truck Rental Agreement from our analysis bears no weight that would aid the 3<sup>rd</sup> Interested Party in his claim of innocence on the activities of the 1<sup>st</sup> Interested Party. We find no basis upon which the 3<sup>rd</sup> Interested Party's claim of innocence can reasonably be believed when what has been exhibited is an improperly executed Truck Rental Agreement which had already expired at the time the investigations were being conducted in the unlawful activities by the 1<sup>st</sup> Interested Party.
- 5.52. There is evidence that at the time the Trucks were found at the 2<sup>nd</sup> Interested Party's Premises, they were being used to

ferry illegally harvested forest products by the 1<sup>st</sup> Interested Party. Further evidence is that at the time the Investigative Officers visited the premises, the Manager of the 1<sup>st</sup> Interested Party, Mr. Wang Xue Xi, never mentioned any Rental Agreement with the 1<sup>st</sup> Interested Party.

5.53. When the inconsistencies, lack of credible documentation and late disclosure of the documentation are all put together, they lend credence to the Applicant's assertion that those were fabricated as an after thought. In our view they actually take away from the 3<sup>rd</sup> Interested Party's claim that he had no knowledge of the activities undertaken by the 1<sup>st</sup> Interested Party.

5.54. There is no dispute even from the 3<sup>rd</sup> Interested Party that all the Trucks and Trailer he sought to claim were used by the 1<sup>st</sup> Interested Party to ferry Logs subject of these Proceedings. Given their connection to the illegal activities carried out by the 1<sup>st</sup> Interested Party, we find that they were all used as instrumentalities. The 3<sup>rd</sup> Interested Party has therefore not met the threshold of innocent Third Parties to escape Forfeiture of the Trucks and Trailer to the State as envisioned under **Section 12** of the **FPOCA**.

5.55. Finally, we proceed to deal with the 4<sup>th</sup> Interested Party's claim of Declaration of Interest in Various Equipment including Trucks, Wood Misers, Fork Lifters Front Loader and Wheel Loader as shown in the Hire Agreement marked "**WKH2**".

- 5.56. For clarity the Folk Lifters claimed by the 4<sup>th</sup> Interested Party bear serial No. TS2510002 and 4C 57150Z072 whose proof of ownership is exhibited as **“WKH3”**; the Front Loader bears No. ZL 304 DL 377371-2023; the Wheel Loader bears Model No. ZL 30EID NO. CLG 40030 ECCL with White Book marked **“WHK4”** and Sino Truck Registration No. AAA 049 SF whose White Book is marked as **“WHK5”**.
- 5.57. We have addressed our minds to the Affidavit in Support of Claim for Declaration of Interest sworn by Wang Kai Hong in his capacity as the Director of Kai Hong Sociedade Unipessoal Limitada whose Certificate of Incorporation has been exhibited as **“WHK1”**. On our analysis of this exhibit, we have confirmed the startling observation made by the Applicant that the Deponent who claims to be a director in the said company does not appear as such in the exhibit which only shows one Director as Xiang Rong Li.
- 5.58. The significance of the observation above is that the Deponent would have no capacity to swear the Affidavit and by extension to lay any claim of the Folk Lifters, Front Loader, Wheel Loader, Wood Misers and the Trucks. On this score alone, the claim would be ill fated from inception. Notwithstanding this, we will consider the other aspects for avoidance of doubt.
- 5.59. Our perusal of the exhibit marked **“WKH2”** which is said to be a copy of the Hire Agreement with the 1<sup>st</sup> Interested Party intended to show that the 4<sup>th</sup> Interested Party is an innocent Lessor of the Equipment in Paragraph 5.54, reveals that the Equipment is listed separately from the Agreement which

does not appear to make any reference to the Equipment. The list is also not signed by the Parties while the Agreement is not dated.

- 5.60. Further still, the purported Hire Agreement was executed by the Deponent as the Legal Representative of Kai Hong Company, the Lessor, but has not exhibited any document clothing him with authority to execute the same on behalf of the Lessor. These glaring deficiencies lend credence to the contention by the Applicant of the possibility of the list being generated and attached after the fact thereby raising doubts on the authenticity of the Agreement.
- 5.61. Of further note, is our observation that the Deponent of the Affidavit in Support of claim of Interest over the Equipment Mr. Wang Kai Hong, has exhibited the Certificate of Incorporation for the 4<sup>th</sup> Interested Party (Kai Hong Societate Unipossoal) which shows that Mr. Xiang Rong Li is the sole Director, yet the said Mr. Xiang Rong Li signed as the Legal Representative of the 1<sup>st</sup> Interested Party (Sena Plus Investment Limited). In the absence of a plausible explanation why this is so, among other discrepancies earlier noted, we are unable to attach any weight to the Hire Agreement which as the evidence shows, was not even disclosed during the course of the investigations.
- 5.62. We have also made a general finding regarding “**WKH1**” the Certificate of Incorporation, “**WKH3**”, the purported proof of ownership, “**WKH4**” the White Book for the Truck Registration No. AAA 049 SF. The findings are that these have not been authenticated as required by the

**Authentication of Documents Acts Chapter 75** of the **Laws of Zambia. Section 3** of this **Act** provides that:

*“Any document executed outside Zambia shall be deemed to be sufficiently authenticated for purposes of use in Zambia if-*

*(a)-----*

*(b)-----*

*(c)-----*

*(d)In the case of a document executed in any place outside her Britannic Majesty’s dominion (hereinafter referred to as a “foreign place”) it shall be duty authenticated by the signature and seal of office-*

*(i) of a British Consul General or Vice Consul in such foreign place; or*

*(ii) of any Secretary of State, under secretary of State, Governor, Colonial Secretary, or any other person in such foreign place who shall be shown by the certificate of a Counsulor vice Consul of such foreign place in Zambia to be duly authorized under the law of such foreign place in Zambia or duly authorized under the law of such foreign place to authenticate such documents”.*

5.63. By **Section 2** of the **Authentication of Documents Act**:

*'Document' is defined as "any deed, contract, power of attorney, affidavit, or other writing, but does not include an affidavit sworn before a Commissioner of the High court".*

*'Authentication' is defined as "the verification of any signature or signatures on a document".*

5.64. The Supreme Court of Zambia had occasion to interpret the provisions of **Section 3** of the **Authentication of Documents Act** in the case of **Lumus Agriculture Company Limited and Others v Gwembe Valley Development Company Limited (In Receivership)**<sup>18</sup> where it held that:

*"If a document executed outside Zambia is authenticated as provided by the Authentication of Documents Act, then it shall be deemed or presumed to be valid for use in this country and if is not authenticated the converse is true that it is deemed not to be valid and can not be used in this country".*

5.65. In our further analysis, we have reviewed exhibit **"WKH6"** which is the Customs Road Freight Manifest tendered to confirm transportation of the Wood Misers purportedly leased out to the 1<sup>st</sup> Interested Party. The exhibit has a provision requiring certification that the particulars indicated on the form are a true reflection of what was conveyed. There is also a provision for the Customs Stamp. These provisions appear blank revealing that the document is incomplete and anyone could easily have typed the

content appearing without ascertaining the veracity of what is indicated. We are unable to attach any weight to such an incomplete document.

- 5.66. Our final analysis is an exhibit marked “**WKH7**” which comprises collectively, documents said to have been issued by the Zambia Revenue Authority (**ZRA**). The documents show that they were printed from the ZRA system on 8<sup>th</sup> and 9<sup>th</sup> July, and 24<sup>th</sup> August, 2024. There is no doubt that these are data messages within the meaning of **Section 2** of the **Electronic and Communications Act No. 4 of 2021**.
- 5.67. **Section 9 (1) (4)** of the said **Act** provides guidance on the production of data messages as follows:

**“9(1) In any legal proceedings, the rules of evidence shall not be applied so as to deny the admissibility of a data message in evidence**

**(4) A data message by a person in the ordinary course of business, or a copy or print out of, or an extract from, the data message certified to be correct by an officer in the service of that person, shall on its mere production in any civil, criminal, administrative or disciplinary proceedings under a written law, be admissible in evidence contained in a record, copy, print out or extract”.** (emphasis ours)

- 5.68. Applying the above Statutory provisions to the exhibits herein marked “**WKH7**”, we find that the 4<sup>th</sup> Interested Party has not met the requisite standard in having them

admitted into evidence and are therefore not helpful to the 4th Interested Party's claim of interest.

- 5.69. In the final analysis, the totality of the evidence placed before us by the 4<sup>th</sup> Interested Party in making a claim over the Properties subject of the Application for Forfeiture by the Applicant is not satisfactory at all. We find that the Affidavit in Support together with the documents exhibited have not satisfied the requirement to sustain an interest under the provisions of **Section 12** of the **FPOCA** sought to be relied upon.
- 5.70. Our finding above entails that the Motor Vehicles and Equipment cannot escape suffering the same fate as that of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Interested Parties. We say so because these qualify to be instrumentalities as they were integral to the furtherance of the 1<sup>st</sup> Interested Party's unlawful business activities constituting tainted Property. Without these vehicles and equipment, the illegalities by the 1<sup>st</sup> Interested Party would not have been facilitated or perpetuated.
- 5.71. We find guidance in the cases of **The People v Lukisha<sup>2</sup> Kanyeka, Nachanga Transport v The Director of Public Prosecutions v Engels<sup>14</sup>** and **Elvis Haatila and J. Yumba General Dealers v The Director of Public Prosecutions<sup>13</sup>** and our assessment is that the said Motor Vehicles and Equipment had a functional proximity and connection as conduits and instrumentalities in the unlawful business activities carried out by the 1<sup>st</sup> Interested Party.

## 6.0. CONCLUSION

6.1. On the totality of the evidence before us, we find that:

6.1.1. The 1<sup>st</sup> Interested Party in dealing with 1,899 Mupapa Logs, 152 Mukwa Logs, 19 Mupapa Logs and 40 Planks contravened the provisions of the **Forest Act No. 4 of 2015** and **Section 71** of the **Forfeiture of Proceeds of Crime Act No. 19** of the **Laws of Zambia**. The Logs are therefore liable for Forfeiture.

6.1.2. The 2<sup>nd</sup> Interested Party has met one of the requirements for Declaration of Interest envisioned in **Section 12** of the **FPOCA** regarding ownership of Stand No. 20520 Lusaka. However, these Premises became an instrumentality and tainted making them liable for Forfeiture because this is where the unlawful activities by the 1<sup>st</sup> Interested Party were being conducted from.

6.1.3. The 3<sup>rd</sup> Interested Party has met the requirement regarding ownership of the Sino Truck Registration No. ARC 4827 ZM as required under **Section 12** of the **FPOCA**. However, there is evidence that it was used, among other vehicles, by the 1<sup>st</sup> Interested Party in the course of the unlawful business making it tainted and an instrumentality liable for Forfeiture. Other than the said Sino Truck, the 3<sup>rd</sup> Interested

Party has not satisfied the claim for interest in the Truck Horse Registration No. AA1 490 SF, Trailer Registration No. 399 NP, Truck Registration No. ARC 4827 and Trailer Registration No. ARC 6223 ZM. All these Motor Vehicles are tainted and instrumentalities liable for Forfeiture.

- 6.2. The net effect of our findings above is that the Applicant has successfully made out its case for Forfeiture of all the Properties subject of this Application. Accordingly, the Properties are all Forfeited to the State for application by the Director of Public Prosecutions as may be deemed appropriate within the confines of the Law. For avoidance of doubt, the forfeited Properties are as follows:

**1,899 Mopane Logs, 152 Mukwa Logs, 19 Mupapa Logs, 40 Plunks, Fork Lifter Serial Number Ts 2510002-2016, 4 Wood Misers Serial Number (i) 13700766055 1601, (ii) GB/T11707-2013-170Kgs 2019, (iii) GB/T11707-2013- 183Kgs- 2022, (iv) Sena Plus Investments Limited Premises Stand Number 20520 on Certificate Number 185609 Lusaka, Truck Horse Registration Number ARC 4827 and Trailer Registration Number ARC 6223ZM, Truck And Trailer Registration Number AAA 048 SF, Truck Horse Registration Number AAI 4905 F and Trailer Registration Number BAL 4303ZM, Fork Lifter 4C571504Z072 Registration Number G. 15971, Wheel Loader Model ZL30E ID Number CLG0030ECCL352818, Front Loader ZL 30E DL 377371-2023.**

- 6.3. Our decision should send and reinforce a clear message to owners of both movable and immovable properties that even as they enter into Commercial Agreements, they must satisfy themselves that their assets will not be used as

instrumentalities in the commission or furtherance of Economic and Financial Crimes. Courts have a duty not to embolden people to engage in or to perpetrate illegal logging but to protect the country's Natural Resources for future generations.

6.4. Costs are for the Applicant to be Taxed in Default of Agreement.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 29<sup>TH</sup> DAY OF SEPTEMBER, OF 2025.**



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



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



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