

**IN THE COURT OF APPEAL OF ZAMBIA**      **APPEAL 231/2023**  
**HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

**LISBOA CASINO LIMITED**



**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**      **RESPONDENT**

**Coram: Kondolo, Makungu and Chembe, JJA**  
**On 6<sup>th</sup> January and 6<sup>th</sup> February, 2026**

*For the Appellant: Mr. J.P. Hantumbu and Mr. K. Kawana both of Messrs.  
Muleza Mwiimbu & Co*

*For the Respondent: Miss. M. Kapambwe Chitundu - Deputy Chief State  
Advocate with Mr. N. Zulu – State Advocate both form National prosecutions  
Authority*

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**JUDGMENT**

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*Makungu, JA, delivered the Judgment of the Court.*

**Cases referred to:**

1. *Netta Shimwambwa Shakumbila v. Patrick Chibamba – SCZ/8/248/2014*
2. *Zulu v. Avondale Housing Project Limited (1982) Z.R. 175*
3. *Verrechia v. Commissioner of Police for Metropolis (2002) EWCA Civ 605*
4. *Elvis Mtonga v. Bank of Zambia – SCZ /8/275/2015*
5. *The People v. Austin Chisangu Liato – SCZ Appeal No. 291/2014*
6. *Zambian Breweries Plc v. Lameck Sakala – SCZ Appeal No. 19 of 2012*
7. *Evans Mulimo v. Zambia Daily Mail and Attorney General – CAZ Application No. 24/2021*
8. *Esther Nyawa Tembo Lungu v. Director of Public Prosecutions – CAZ Appeal No. 59 of 2024*

**Legislation referred to:**

1. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010*
2. *The State Proceedings Act Chapter 71 of the Laws of Zambia*

3. *The Court of Appeal Rules Statutory Instrument No.65 of 2016*
4. *The Evidence (Banker's Book) Act, Chapter 44 of the Laws of Zambia*
5. *The Tourism and Hospitality Act, 2015 – Act No. 13 of 2015*

**Authorities referred to:**

1. *Matibini, P. 2017. Zambian Civil Procedure: Commentary and Cases. Durban: LexisNexis.*

## **1.0 INTRODUCTION**

1.1 This appeal challenges the decision of Justices S. Wanjelani, C. Zulu and K. Mulife of the Economic and Financial Crimes Court delivered on 17<sup>th</sup> May 2023. In that judgment, the court granted the respondent's non-conviction-based forfeiture application and ordered the forfeiture to the State of various sums of money in different denominations, which had been found at the appellant's (interested party) premises by officers from the Drug Enforcement Commission and deemed tainted property derived from the use of a forged licence.

## **2.0 BACKGROUND**

2.1 On 26<sup>th</sup> January 2023, the respondent, as applicant, issued a Notice of Motion seeking a Non-Conviction Based Forfeiture Order in respect of tainted property. The application was premised on Order XXX, Rules 15 and 17 of the High Court Rules, Chapter 27 of the Laws of Zambia, as read together with

sections 29 and 31 of the Forfeiture of Proceeds of Crime Act, No. 19 of 2010.

2.2 The motion was determined solely on affidavit evidence and written submissions advanced by the parties, without oral testimony.

### **3.0 APPLICANT'S AFFIDAVIT IN SUPPORT OF THE MOTION**

3.1 In the supporting affidavit sworn by Patrick Chileshe Kafusha, an Investigations Officer with the Anti-Money Laundering Investigations Unit of the Drug Enforcement Commission (DEC), it was deposed that on 3<sup>rd</sup> February 2022, the DEC received a report from the Ministry of Tourism and Arts alleging the Interested Party's involvement in money laundering since 2020 and the operation of a casino under a suspected forged licence. Acting on this report, the deponent initiated inquiries with the Chief Registrar of PACRA, who confirmed the Interested Party's incorporation in Kitwe, Copperbelt Province, with directors/shareholders Jie Ying, Pang Yu, Huang Jianlan, and Lin Yuanbo, all Chinese nationals.

3.2 The deponent further requested a random bank search from the Acting Director General of the Financial Intelligence Centre

(FIC). The search revealed the Interested Party's accounts at First National Bank (FNB), Kitwe Branch—namely, a dollar account (No. 62880139045) and a kwacha account (No. 62880138097), with Ms Huang Jianlan one of the Directors of the Company as signatory. The bank statements of the said accounts marked 'PCK1' showed no significant funds. A statement from First National Bank (FNB) Banker Ms Vivian Mwinda, exhibited as 'PCK6,' corroborated these details.

3.3 Additionally, accompanied by DEC officers from Lusaka and Ministry of Tourism officials from Ndola, the deponent searched the Interested Party's premises, seizing two firearms and various currency sums: K809,135; USD 126,120; Chinese Yuan 3,570; Euro 350; GBP 60; Indonesian rupiah 150,000; Australian Dollar 100; Rand 50; Canadian Dollar 10; and Cambodian Riel 600, deemed tainted property. In support of the seizure, seizure notices marked 'PCK2-3' were exhibited.

3.4 The deponent further deposed that a statement from Ms. Lilian Saili Bwalya, a Director at the Ministry of Tourism (exhibited 'PCK5'), confirmed that the appellant had not submitted any application for renewal of its licence. The company licence was due to expire on 13<sup>th</sup> December, 2021 but the company had another licence Number 0193487 which was expiring on 21<sup>st</sup>

November, 2021. The said licence number 0193487 was not in the system.

3.5 Further, it bore a signature for the late former Director of Tourism Mr. Reuben Zulu. It bore a date when Mr. Zulu had already left the Ministry of Tourism. This raised suspicion that the licence was forged.

3.6 On 2<sup>nd</sup> December 2022, Ms Huang Jianlan was warned and cautioned for offences including operating a casino without a licence (contrary to s.47 of Act No.23 of 2007, read with s.79 of the Ministry of Tourism and Hospitality Act No.13 of 2015), forgery (s.342 read with s.347, Penal Code Cap.87), making false documents (s.344), uttering false documents (s.352), and possession of suspected proceeds of crime (s.71, Forfeiture of Proceeds of Crime Act No.19 of 2010); she elected to remain silent. A copy of the warn and caution statement was marked 'PCK7.'

3.7 The deponent further averred that the Interested Party had no other income-generating activities apart from the casino.

#### **4.0 INTERESTED PARTY'S CASE**

4.1 The appellant as an interested party opposed the application through an affidavit sworn by its Director Huang Jianlan, on 2<sup>nd</sup> March 2023. She conceded the authenticity of exhibits

'PCK1' as summaries of the Interested Party's bank statements, but disputed the assertion of nil balances, averring that these exhibits reflect mere overviews rather than comprehensive records.

4.2 The deponent also acknowledged the search conducted by DEC officers and others at the Interested Party's business premises and her residence, during which the stated currency sums were collected, but averred that no seizure notice was issued in relation thereto. Exhibits 'PCK2-3' were impugned as pertaining not to the Interested Party but to Giant Dragon Casino Limited, with the sole relevant notice (exhibited as 'HJ1,' identical to 'PCK3') concerning only the expired casino licence No. 0193487.

4.3 The deponent further expressed astonishment at her personal caution and arrest, given the Interested Party's status as a limited company amenable to criminal charges; she exhibited 'HJ2', a letter from DEC dated 19<sup>th</sup> January 2023, addressed to her lawyers. She further averred that no charges have been preferred against the Interested Party to date. According to the deponent, the applicant's failure to charge the Interested Party and the absence of a seizure notice were fatal to the motion.

- 4.4 That the motion was irregular, as neither the Interested Party nor the deponent had absconded, and forfeiture cannot proceed amid pending criminal proceedings against the deponent.
- 4.5 She further disputed the assertion that the seized monies were proceeds of crime, adding that the said money was collected without authority and retained unlawfully.
- 4.6 That the offence which the Interested Party might be answerable for was operating without a licence, which offence is characterised as non-serious, punishable by fine or imprisonment not exceeding one year, with a corporate entity liable only to a fine. In sum, the deponent averred that the applicant failed to disclose material facts justifying the relief sought.

## **5.0 DECISION OF THE COURT BELOW**

- 5.1 Upon evaluating the evidence on record, the lower Court found that the Interested Party's claim that the funds were seized without a seizure notice was unsupported. The record showed that the funds in question were seized by the applicant's officers pursuant to duly issued seizure notices, marked as Exhibits 'PCK 2-3.' The seizure was effected on the basis that

the Interested Party had been operating a casino without a valid licence.

5.2 The Court further observed that the Director of the Interested Party had been charged with the relevant criminal offences. Licence No. 0193487, seized as part of Exhibit 'PCK 3', was the very licence under which the Interested Party purported to operate the casino.

5.3 The Court also noted that a non-conviction-based forfeiture may be granted even where no criminal charges have been concluded. What matters is the existence of reasonable suspicion that the property is tainted and whether the Interested Party has successfully rebutted that suspicion. In this case, the Court found that the suspicion remained undischarged.

## **6.0 GROUNDS OF APPEAL**

6.1 The grounds of appeal contained in the memorandum of appeal are as follows:

- 1. The honourable court erred both in law and fact when it held that the Notices of Seizures were signed by the representatives of the Appellant contrary to the evidence on record.***

2. *The court below erred both in law and fact when it proceeded to hold that the subject property was acquired by means of a forged licence contrary to the evidence that there was a valid licence expiring 31<sup>st</sup> December, 2021.*
3. *The honourable court erred both in law and fact when it did not take into account the mandatory provision of the law for penalties for expired trading licence*
4. *The court erred both in law and fact when it ordered costs to be paid to the respondent.*

## **7.0 HEARING**

7.1 At the hearing of the appeal, learned counsel for the appellant informally raised preliminary issues that the Supplementary Record of the Appeal that was filed by the respondent on 13<sup>th</sup> January, 2026 was filed late without leave of Court and served upon him the same day. That the said record contains contentious documents which he had not seen before. He referred to the notices of seizure on pages 10 to 12 of the Supplementary Record which are two seizure notices under the **Prohibition and Prevention of Money Laundering Act**

**No. 17 of 2001 of the Laws of Zambia** both addressed to the appellant. He stated that they were not exhibited in the court below and prayed that they be expunged from the record.

7.2 Learned counsel for the respondent opposed the application by referring to pages 21 and 22 of the record of appeal where the lower court referred to the exhibits 'PCK 1 – 3. She also referred to **Order 10 (10) (1), (2) and (3) of the Court of Appeal Rules, (CAR)** which provide for the filing of a supplementary record of appeal by the respondent but without any time frames for filing and serving the same.

7.3 Miss. Chitundu further submitted that the Respondent's Supplementary Record of Appeal was certified correct by the High Court Registrar.

7.4 She alleged that the interested party put different exhibits as 'PCK2' and 3. She urged us to have a look at the High Court record to confirm that, and then to reprimand the appellant's counsel for attempting to mislead the Court.

7.5 In reply, Mr. Hantumbu rejected Counsel Chitundu's accusation. He referred the Court to the documents at pages 66 and 68 of the record of appeal insisting that these were the documents exhibited as 'PCK2' and 'PCK4' in the lower court. He further stated that there was no affidavit in reply filed in

the lower court which meant that the affidavit in opposition contained the true facts of the matter.

7.6 We decided to determine the preliminary issue together with the main appeal.

## **8.0 APPELLANT'S HEADS OF ARGUMENT**

8.1 Counsel for the appellant relied on the heads of argument dated 28<sup>th</sup> July 2023. In support of the first ground of appeal, it was submitted that the lower Court erred in concluding that representatives of the Interested Party had signed the Notices of Seizure. He pointed out that the notices at pages 66 to 69 of the Record of Appeal are addressed to "Steven Lin – General Manager, Giant Dragon Casino Limited," and none bears the signature of any representative of the Interested Party. According to counsel, the evidence on record does not support this finding.

8.2 To fortify the argument, reliance was placed on the decision in **Netta Shimwambwa Shakumbila v. Patrick Chibamba**,<sup>1</sup> where the Supreme Court underscored the duty of a trial court to evaluate evidence in a balanced and dispassionate manner. Counsel submitted that the court below failed in this task by overlooking the appellant's affidavit evidence and imputing

facts that do not appear on the record. The Respondent, it was argued, produced no evidence showing that seizure notices were issued to the Interested Party; an omission which, in counsel's view, strikes at the foundation of the forfeiture proceedings. We were accordingly urged to uphold this ground of appeal.

8.3 Turning to the second ground, counsel challenged the finding that the Interested Party was trading on the strength of a forged licence. It was contended that this conclusion is inconsistent with the evidence on record, in particular the statement of Ms Lillian Saili Bwalya, a Director in the Ministry of Tourism, who confirmed that the Interested Party held a valid licence expiring on 13<sup>th</sup> December 2021. Counsel faulted the lower court for relying on a document at page 70 of the record, reflecting an expiry date of 27<sup>th</sup> November 2021, without reconciling it with the Ministry's confirmation of the later and valid expiry date. Citing **Zulu v. Avondale Housing Project Ltd**,<sup>2</sup> counsel submitted that this Court is entitled to interfere with findings of fact resting on a misapprehension of the evidence. He contended that had the trial court properly weighed Ms Bwalya's evidence alongside the impugned

document, it could not reasonably have concluded that the Interested Party operated unlawfully.

8.4 The third ground concerns the statutory framework governing the consequences of trading with an expired licence. Counsel argued that **section 79 of the Tourism and Hospitality Act,**<sup>4</sup> prescribes penalties of a fine or imprisonment for such regulatory non-compliance, thereby demonstrating Parliament's intention to treat the lapse as a regulatory offence rather than a predicate for forfeiture.

8.5 Counsel further submitted that no charge was levelled against the Interested Party or its directors under the Act; the only warn-and-caution statement issued was directed at an individual, not the corporate entity. Counsel maintained that this omission undermined the Respondent's reliance on the Forfeiture of Proceeds of Crime Act, as operating with an expired licence does not constitute a "serious offence" within the meaning of **section 2 of that Act,** which contemplates offences punishable by death or by imprisonment for not less than twelve months.

8.6 It was further submitted that the burden was impermissibly shifted to the Interested Party, despite the respondent having adduced no credible evidence demonstrating that the seized

funds were tainted. In particular, counsel highlighted the absence of banking records or financial analysis as a significant evidentiary gap.

8.7 The final ground challenged the award of costs to the respondent. Counsel acknowledged that the award of costs lies within the discretion of the court but contended that such discretion must be exercised judiciously, with reasons where the basis for the award is not apparent. Reliance was placed on authoritative texts, such as **Matibini's** **Zambian Civil Procedure Commentary and Cases**,<sup>1</sup> and the English decision in **Verrechia v. Commissioner of Police for the Metropolis**,<sup>3</sup> both underscoring the need for reasoned justification. Counsel further argued that the Respondent, being a government entity represented by in-house counsel, is not entitled to profit costs. Reference was made to the Supreme Court's decision in **Elvis Mtonga v. Bank of Zambia**,<sup>4</sup> where it was held that in-house counsel, whose representation is internal and non-commercial, do not qualify as "practitioners" for purposes of recovering profit costs under the Legal Practitioners Act. On this basis, it was submitted that the trial court misdirected itself in awarding costs without

explanation and in favour of a party not legally entitled to recover them.

## **9.0 RESPONDENT'S HEADS OF ARGUMENT**

9.1 In response to the appeal, Counsel for the respondent Miss Chitundu relied on the heads of argument filed on 13<sup>th</sup> November, 2023. To counter the first ground of appeal, she submitted that the finding by the court below that the Notices of Seizure were signed by representatives of the appellant was firmly grounded in the evidence. The judgment, at page J14, correctly noted that exhibits 'PCK2' and 'PCK3' are the operative Notices of Seizure relating to the impounded property and Casino Licence No. 0193487. Counsel emphasised that both documents bear the signatures of individuals identified as representatives of the Interested Party. Exhibit 'PCK3,' in particular, reflects that the notice was issued to Huang Jianlan, Director of Lisboa Casino Limited, who appended her signature to it on 12<sup>th</sup> December 2022. The affidavit evidence further confirmed the deponent's directorship in the appellant company, a fact that was never contested. No evidence, it was argued, was presented to

suggest that the notices were issued to any entity other than the appellant.

9.2 Regarding ground two, counsel countered the appellant's contention that the trial court erred in finding that the subject property was linked to a forged licence. Reliance was placed on exhibit 'PCK5', which discloses material inconsistencies in the purported licence, including discrepancies in duration and serial numbering, none of which align with the official serials issued by the Ministry of Tourism. The exhibit also bore the signature of a former Director of Tourism who is now deceased, further undermining its authenticity. Counsel noted that the appellant did not challenge the seizures reflected in exhibits 'PCK2' and 'PCK3', nor did it place before the lower Court the alleged valid licence upon which it now relies. As the record stood, the appellant possessed no genuine licence at the time of the Drug Enforcement Commission operation. According, to counsel the document bore evident characteristics of forgery.

9.3 Given these circumstances, counsel submitted that the lower Court was entitled to conclude that the seized property was connected to a forged licence. The gravity of the offence, coupled with the appellant's failure to produce any genuine

licence, provided a firm evidential basis for the forfeiture order. Thus, ground two also lacks merit.

9.4 In opposing ground three, counsel argued that the appellant's claim, that the lower Court failed to consider the statutory penalties for operating with an expired licence, was unfounded. The record shows that the court below expressly considered **section 79 of the Tourism and Hospitality Act**. The core issue, counsel stressed, was not mere expiry but the use of a forged licence, an act which constitutes a "serious offence" within the meaning of the **Forfeiture of Proceeds of Crime Act (FPOCA)**.

9.5 Counsel further submitted that, under the civil forfeiture regime, once the State establishes a reasonable link between the property and suspected criminality, the evidential burden shifts to the respondent to furnish a credible explanation of the lawful source of the funds. The appellant offered none, nor did it dispute the forgery itself.

9.6 Counsel further submitted that the argument that forfeiture cannot be ordered absent criminal charges was dismissed as misconceived. Section 31(4) of the FPOCA makes it clear that non-conviction-based forfeiture proceeds independently of any criminal prosecution. In support of this position, reliance was

placed on the case of **The People v. Austin Chisangu Liato**.<sup>5</sup>

<sup>5</sup>It was further argued that the warn and caution administered to Director Huang Jianlan was proper, as company officers may be held personally liable where fraudulent activity is implicated. That the appellant also failed to produce any financial records demonstrating legitimate earnings. We were therefore urged to uphold the lower court's findings.

- 9.7 On the fourth ground, which challenges the award of costs, counsel submitted that **section 17 of the State Proceedings Act** permits the State to be awarded costs in civil proceedings on the same basis as any other litigant. There is no legal impediment to such an award, and the trial court acted within its discretion. She maintained that this ground, like the others, lacks merit.

## **10.0 ANALYSIS AND DETERMINATION**

- 10.1 We have carefully reviewed the record of appeal and the written arguments by counsel for both parties. Although four grounds of appeal were framed, they ultimately condense into two central inquiries: whether the lower Court properly evaluated the evidence and correctly applied the legal framework governing non-conviction-based forfeiture; and

whether the ensuing award of costs amounted to a proper exercise of judicial discretion. For coherence, we shall consider the grounds sequentially, mindful of their interrelatedness.

10.2 We now turn to the finding of the lower Court on the execution of the Notices of Seizure. The appellant argued that the lower Court erred when it concluded that the Seizure Notices were signed by its representatives. Counsel drew our attention to exhibits 'PCK2-PCK3' appearing on pages 66 to 69 of the record, addressed to one Steve Lin, General Manager of Giant Dragon Casino Limited, and bearing the signature of Stephen Lin. According to counsel, these demonstrate that the notices of seizure were not executed against the appellant.

10.3 It is trite that factual findings must be anchored on evidence properly placed before the court as emphasised in **Zambian Breweries Plc v. Lameck Sakala**.<sup>6</sup> Courts must resist the temptation to infer facts not borne out by the evidence on record.

10.4 At page 20 of the record (J13 of the lower Court judgment), the lower Court found exhibits 'PCK2' and 'PCK3' to be Seizure Notices directed at the appellant and executed by its representative. The copies contained on pages 66 to 69 of the record are addressed to Steve Lin of Giant Dragon Casino

Limited and the respondent maintains that these are not the original notices relied upon by the lower Court. Rather, the respondent asserts that the authentic notices were issued to the appellant and signed by its Director, Huang Jianlam, who did not challenge the genuineness of the signature or the documents.

10.5 This takes us to the preliminary question that was raised before us by the respondent about the Supplementary Record of Appeal filed by the respondent on 13<sup>th</sup> January, 2026 and served on the appellant the same day.

10.6 **Order X rule 10 (1) and (3) of the Court of Appeal Rules** provides as follows:

***“10. (1) If the respondent considers that the record filed by the appellant is defective that respondent may, without prejudice to the respondent’s rights under rule 18, if any, file twenty one hardcopies and an electronic copy of any further documents which in that respondent’s opinion are required for the proper determination of the appeal.***

***(3) A copy of the supplementary record of appeal shall be served on the appellant and any other***

***respondent who has filed a notice of address for service.”***

10.7 There are no time limits provided for in the above provisions for filing and serving a supplementary record of appeal. However, we have held from time to time that where the rules do not provide for time to do something, a party ought to perform that action within a reasonable time of 14 days from the first day of when the action should have been performed. (See **Evans Milimo v. Zambia Daily Mail and Attorney General**,<sup>7</sup>). The appellant’s counsel admittedly filed and served the supplementary record late. She profusely apologised for that.

10.8 We are of the view that the respondent was not prejudiced by the late service, and the issue raised is of paramount importance. We shall therefore take judicial notice of the High Court record to verify and determine which exhibits are correct. The High Court record shows exhibit ‘PCK2’ as the Notice of Seizure with serial number 15003 to TIMIN – Casino Manager Lisboa Casino Limited for the various denominations of currency as stated in paragraph 3.3 of this judgment. This is the same exhibit on page 10 of the Supplementary Record

of Appeal. Both the first and second pages of this exhibit were signed by the Investigations Officer (I.O) Shadreck Silumbwe and a representative of the appellant with a witness.

10.9 The purported exhibit 'PCK2' found in the appellant's record of appeal at pages 66 and 67 is a different Notice of Seizure with serial number 15002 to Mr. Steve Lin- General Manager of Giant Dragon Casino Limited. It was signed by an Investigations Officer named P.C. Kafusha on both pages and the items seized were different from what was seized from the appellant. It is therefore clear that in an effort to mislead this Court, the appellant filed an exhibit which was not produced in the lower court as 'PCK2.'

10.10 Exhibit 'PCK3' appearing in the original record from the High Court is a Notice of Seizure with serial number 15006 issued to Haung Jianlan – a Director of the appellant company for the seizure of Casino Licence number 0193487 said to be valid from 27<sup>th</sup> November, 2020 to 27<sup>th</sup> November, 2021. It was signed by the Investigations Officer P.C. Kafusha. This is the same exhibit appearing on page 12 of the Respondent's Supplementary Record.

10.11 The appellant has exhibited on page 68 of the record of appeal a Notice of seizure with serial number 15001 issued to Steven

Lin- General Manager of Giant Dragon Casino Limited on 29<sup>th</sup> November, 2022 and signed by Kafusha P.C. The items seized under this Notice were different from those seized from the appellant.

10.12 It is our firm view that the appellant again tried to mislead the Court by marking this exhibit as 'PCK3,' which does not even relate to this case. It is not on the High Court record that we have seen. If it were on record, the lower Court would have made an observation. It is clear from exhibit 'PCK5' that the appellant and Giant Dragon Casino were both investigated during the same period in 2022.

10.13 For the foregoing reasons, we dismiss the preliminary issue raised. We do not take kindly to the mischievous actions of the respondent in this regard, and urge the respondent to report the appellant's advocates to the Law Association of Zambia Disciplinary Committee.

10.14 On the question of whether the Court erred in concluding that the appellant operated under a forged licence, the appellant argued that it possessed a valid licence expiring on 13<sup>th</sup> December 2021, and that the trial court failed to consider the statement of Ms Lilian Saili Bwalya of the Ministry of Tourism. The evidentiary difficulty with this submission is apparent.

The licence that was valid on 13<sup>th</sup> December, 2021 was not produced by the appellant. Exhibit 'PCK5,' emanated from Lillian Sali Bwalya, the Director of Tourism in the employ of the Ministry of Tourism since June, 2020. This was the statement she gave to the Drug Enforcement Commission (DEC). It disclosed material anomalies on Licence No. 0193487 which licence was said to be a temporal one valid from 27<sup>th</sup> November, 2020 to 27<sup>th</sup> November, 2021. (See page 13 of the Supplementary Record of Appeal. The anomalies include an inconsistent serial number, irregular duration, and the purported signature of a former Director of Tourism who was no longer in employment at the time the licence was purportedly issued. These in our view were not minor clerical errors, but fundamental defects affecting authenticity.

10.15 In **Zulu v. Avondale Housing Project Ltd**, the Supreme Court guided that appellate interference with factual findings is reserved for instances where the findings are plainly wrong or grounded in a misapprehension of the evidence. We hold that the lower Court's conclusion that the licence bore hallmarks of forgery was grounded in objective inconsistencies observed above, not speculation. We thus find no misdirection in the lower Court's conclusion that: "*The interested party failed to*

*dislodge the suspicion that the property is tainted in the manner alleged..... the applicant has proved on the balance of probabilities, that the subject property is tainted as it was derived from the use of a forged licence.”*

10.16 We now address the complaint that the lower Court misapplied the Forfeiture of Proceeds of Crime Act (FPOCA) to the facts of this case. The appellant contends that operating with an expired licence is merely a regulatory infraction under **section 79 of the Tourism and Hospitality Act** and therefore cannot constitute a basis for forfeiture under the FPOCA.

10.17 In our view, that submission misapprehends the foundation of the trial court’s reasoning. The forfeiture application was not only anchored on the expiry of the licence. It arose from allegations of forgery, conduct that constitutes a criminal offence under the Penal Code and falls within the definition of a “serious offence” set out in section 2 of FPOCA. Under that provision, a serious offence is one punishable by death or by imprisonment for a term of not less than twelve months. Forgery meets that statutory threshold.

10.18 Section 31(4) of FPOCA expressly permits non-conviction-based forfeiture proceedings to run independently of any criminal prosecution. The section states that:

***“The validity of the forfeiture order is not affected by the outcome of criminal proceedings, or investigations with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.”***

10.19 This principle was reaffirmed in **The People v. Austin Chisangu Liato**.<sup>5</sup> What matters in such proceedings is not the existence of a criminal conviction but whether the State has established reasonable grounds to suspect that the property is the proceeds of crime or unlawful conduct. Once such a prima facie case is established, the evidential burden shifts to the respondent to demonstrate a lawful source.

10.20 Before we address the issue of costs, there is an important point of law that we need to discuss: the respondent relied on bank statements obtained from First National Bank (FNB) which were produced in the affidavit in support of the Motion for forfeiture sworn by Patrick Chileshe Kapusha the Investigations Officer in the employ of the DEC. They were produced collectively as ‘PCK1.’ The appellant disputed the allegation by the respondent that because the statements did not reveal inflows commensurate with the seizable sums

found on the premises, then the monies were tainted with illegality. The appellant's assertion was that casinos 'make money daily.' Under the circumstances, the legal question arising is whether the bank statements were produced properly or improperly.

10.21 In the case of **Esther Nyawa Tembo Lungu v. Director of Public Prosecutions**,<sup>8</sup> we had to determine a similar issue. At J10 paragraph 5.13 of the Judgment, we referred to the **Evidence (Bankers Book) Act** sections 3, 4 and 5 which read as follows:

***“3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.***

***4. (1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business and that the book is in the custody or control of the bank.***

***(2) Such proof maybe given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner for oaths or person authorised to take affidavits.***

***5. (1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.***

***(2) Such proof shall be given by some person who has examined the copy with the original entry, and maybe given either orally or by an affidavit sworn before any commissioner for oaths or person authorised to take affidavits."***

10.22 Based on the evidence in that case, we held that the arresting officer did not meet the provisions of Section 4 (2) and Section 5 of the said Act. We further held that since the case proceeded on affidavit evidence, the bank statements were supposed to be introduced into evidence through an affidavit deposed to by a bank official. As a result, we expunged evidence of two of the appellant's bank statements.

10.23 For clarity, a bank statement is fundamentally a summary copy of entries from a bank's internal records, which are considered bankers books. Similarly, in this case, there was no oral or affidavit evidence from any bank official, and therefore we hold that **sections 4(2) and 5 of the Evidence (Banker's Book) Act** were breached by the respondent. For this reason, we further hold that the lower court misdirected itself in relying on the bank statements.

10.24 Nevertheless, this case revolves around the question whether on the balance of probabilities the appellant ever traded under a licence reasonably believed to have been forged. It is not clear when the monies that were seized were earned from the casino business but it was admitted by the appellant that they were earned from the said business. Therefore, the likelihood that the profits were earned while trading under the licence that was reasonably believed to be forged was very high. The prima facie case was not rebutted by the appellant, so even if the court had not relied on the bank statements, it would have come to the same verdict.

10.25 As regards the issue of the costs order, **Section 17 of the Proceedings Act**, <sup>2</sup> provides as follows:


***“In any civil proceeding or arbitration to which the state is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the state accordingly.....”***

10.26 This section is self-explanatory and appears to place the State on the same footing as any other litigant regarding costs. However, the case of **Elvis Mtonga v. Bank of Zambia**,<sup>7</sup> referred to by the appellant clarified that in-house counsel are not entitled to profit costs. The analogy is the same in this case as the respondent is represented by its own employees. Properly construed, the **Elvis Mtonga**,<sup>7</sup> case relates to computation of profit costs and not the State’s eligibility to be awarded costs as a successful party.

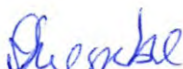
10.27 We therefore are of the view that the lower Court did not err in awarding costs to the successful party. Nevertheless, the Court should have clarified that the respondent is entitled to out of pocket expenses and not profit costs.

**11.0 CONCLUSION**

11.1 All being said, ground 4 of the appeal partially succeeds in that we have found that the respondent is not entitled to profit costs. Only to this extent is the lower court's judgment altered. All the other grounds of appeal fail. The appellant shall bear the costs of the appeal, to be taxed in default of agreement.

  
.....  
**M.M. KONDOLO, SC**  
**COURT OF APPEAL JUDGE**

  
.....  
**C.K. MAKUNGU**  
**COURT OF APPEAL JUDGE**

  
.....  
**Y. CHEMBE**  
**COURT OF APPEAL JUDGE**