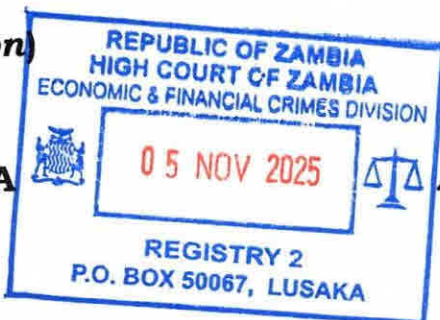


**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES DIVISION REGISTRY
HOLDEN AT LUSAKA
(Criminal Jurisdiction)**

HPEF/06/2024

**BETWEEN
ADOLPHUS MUBANGA**



APPELLANT

AND

THE PEOPLE

RESPONDENT

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, A.
MALATA-ONONUJU AND S.V. SILOKA ON THIS 5TH DAY OF
NOVEMBER, 2025.**

For the Appellant

*Mr. K. F. Bwalya with Mr. Siakwema
Siamalambo – Messrs. K.B.F. &
Partners*

For the Respondent:

*Mr. S. Banda with Ms. L. Tembo and A.
Mubanga – State Advocates – National
Prosecution Authority*

JUDGMENT ON APPEAL

**A. MALATA-ONONUJU J. DELIVERED THE JUDGMENT OF THIS
COURT**

CASES REFERRED TO:

- 1. Freeman and Lockyer (A Firm) Vs Buckhurst Park Properties (Mangal) Ltd. (1964) 2 Q.B;*
- 2. Dorothy Mutale and Richard Phiri S.C.J. No. 51 (1977);*
- 3. George Nswana Vs The People (1988-89) Z. R. 174;*
- 4. The People Vs Chrison Mwambana (1971) Z. R. 160;*

5. *Peter Yotamu Hamenda Vs The People* (1972) Z. R. 184;
6. *George Lipepo and Others Vs The People* S.C.J No. 20 of 2014;
7. *The People Vs. Austin Liato* (Appeal No. 291/2014) (2015) ZMSC;
8. *The People Vs Edward Jack Shamwana and 12 Others* (1982) Z. R. 122 (HC) 2;
9. *Katuka Vs Electoral Commission of Zambia* (2016/CC/0025) [2016] ZMCC 2(9 August, 2016);
10. *The People Vs Geoffrey Bwalya Mwamba* - SSPE/022/22;
11. *In re Mahmoud and Ispahani* [1921] 2 KB 716;
12. *Salomon Vs Salomon* [1896] UKHL 1;
13. *Kuta Chambers (sued as a firm) Vs. Concillia Sibulo (Suing as Administratrix of the Estate of the Late Francis Sibulo)* - Selected Judgment Number 36 of 2015;
14. *Queensland Bacon Vs. Rees* (1966) HCA 21-115 CLR 266;
15. *Salomon Vs Salomon* (1896) UKHL 1;
16. *Joshua Lungu Vs The People* - S.C.J. Appeal No. 7 of 2020;
17. *African Milling Company Limited Vs Chambala Sikazwe and Others* - CAZ Appeal No. 173/2019; and
18. *The Director of Public Prosecutions Vs Sharon Lee Brown* (1994) 72 Crim R 527.

LEGISLATION REFERRED TO:

1. *The Forfeiture of Proceeds of Crime Act No 19 of 2010 of the Laws of Zambia;*
2. *The Criminal Procedure Code Chapter 88 of the Laws of Zambia;*
and
3. *The Companies Act No. 10 of 2016 of the Laws of Zambia.*

OTHER WORKS REFERRED TO:

1. *Black's Law Dictionary*, 9th Edition of 2009;
2. G.H.L. Fridman, *The Law of Agency*. 6th Edition, London Butterworths 1990 at page 9;
3. Harold Gill Reuschlein & William A, Gregory in *The Law of Agency and Partnership*, 2nd Edition 1990;
4. William Bowstead, *Bowstead On Agency* (15th Ed. 1985), Sweet & Maxwell.

1. INTRODUCTION

- 1.1. The Appellant herein, was convicted and sentenced in the Subordinate Court of the First Class on 29th November, 2023, to two (2) years Imprisonment with Hard Labour for the offence of being in possession of property reasonably suspected to be proceeds of crime contrary to **Section 71(1)** of the **Forfeiture of Proceeds of Crime Act No. 19 of 2010** of the **Laws of Zambia**.
- 1.2. On 4th December, 2023, the Appellant filed a Notice of Appeal against conviction and sentence and tendered the following six (6) Grounds of Appeal:

“1. The Court erred in law and fact when it convicted the accused on a charge [of] being found in possession of property suspected to be proceeds of crime when there was no such property before Court;

2. The Court erred in law and fact when it arrived at the conclusion that it did not believe that the accused person was an agent against the evidence on record;

3. The lower Court erred in law and fact when the Court decided the money paid to Muchinga Procurement Limited was suspicious when the said Limited Company was never charged and part of the indictment before the Court;

4. The Lower Court erred in law and fact when it arrived at the conclusion that Emma Nakanyika was late;

5. The Lower Court erred in law and fact when it arrived at a conclusion that the money received by the accused was

suspicious because he did not explain why he was paid such huge sums of money as legal fees;

6. The Court erred in law and fact when it convicted the accused person on a charge of being found in possession of property suspected to be proceeds of crime because the accused failed to explain what he used the money for.”

- 1.3. The Appellant filed Heads of Argument on 7th November, 2024. The Respondent filed Heads of Argument in Response on 16th December, 2024.

2. APPELLANT’S HEADS OF ARGUMENT

- 2.1. Counsel for the Appellant began by giving a brief background to the Matter as above and submitted that the Learned Court below refused to accept that the Appellant was a local representative of Curzon Global Hong Kong, a foreign Company which was acting via its Financial Director, a Mr. Lee Zhou.
- 2.2. It was submitted that in arguing this Appeal, Grounds One to Four would be argued as one, while Grounds Five to Six will also be combined.
- 2.3. While noting that this Matter is a Criminal Appeal, Counsel submitted that he would seek this Court’s indulgence to discuss and explain basic principles of Contract Law, Agency Law and Company Law as the firm view was held that this is where the learned trial Court below got mixed up and thereby arrived at very erroneous conclusions resulting in the wrongful conviction of the Appellant.

2.4. In arguing **Grounds One** to **Four**, Counsel submitted that the basic fundamental questions raised in these Grounds are the following:

- i. *Was the Appellant an Agent of Curzon Global Hong Kong Ltd?*
- ii. *What proof, if any, confirms this relationship from the evidence before this Court?*
- iii. *What role did the Appellant play in Curzon Global Hong Kong Ltd procuring the contracts with Zambia Army and/or Zambia Air Force?*
- iv. *What role did the Appellant play in ensuring that Curzon Global Hong Kong Ltd got paid by the Zambian Government?*
- v. *Was the Appellant entitled to be paid for whatever services he rendered to Curzon Global Hong Kong Ltd?*
- vi. *Legally, who was the owner of the money that the Zambian Government paid to Katongo & Company?*
- vii. *Could Katongo & Company refuse the instructions of how to disburse whatever money it received on behalf of Curzon Global Hong Kong Ltd?*

2.5. Counsel submitted that this Court would agree that once these questions are answered the confusion that the Court below saw will evaporate.

2.6. Counsel proceeded to define 'Agency' as provided in **Black's Law Dictionary**, 9th Edition of 2009 at page 70, and submitted on the Law of Agency and the principles that govern agency

relationships by referring the Court to the finding of Diplock L.J. in the case of **Freeman and Lockyer (A Firm) Vs Buckhurst Park Properties (Mangal) Ltd.** ⁽¹⁾ at page 502.

2.7. Counsel submitted that it follows that these contractual legal requirements must always be fulfilled for a valid agency to exist:

- a) *The parties must have contractual capacity,*
- b) *The parties must have reached consensus,*
- c) *The contract must not be illegal,*
- d) *Performance must not be physically impossible, and*
- e) *The agent must have the necessary authority to conclude the contract on behalf of the principal.*

2.8. Counsel submitted that where the principal did not give specific authority to the agent, the law recognizes the principle of ratification after the fact. Counsel proceeded to give the definition of 'Ratification' as provided in **Black's Law Dictionary**, 9th Edition at page 1376, and submitted that put differently, ratification is the express or tacit approval by a principal or alleged principal of an act or agency that exceeds the limit of the authority performed on behalf of the principal. It was submitted that legally, ratification makes the juristic act to be deemed to have been performed with full legal authority retrospectively from the moment of execution thereof.

2.9. Counsel submitted that in the present case, applying the above principle, **PW2** (Therisa Muma Mwelwa) under cross examination at page 12 to 13 of the Record of Appeal confirms very clearly in her testimony and reading off some e-mails that the Appellant

herein is the “*Local representative of [Curzon] Global*”, and later confirms that “*It’s correct Adolphus Mubanga was receiving the money as agent. He withdrew the money according to the instructions given to him by the principal*”.

- 2.10. It was submitted that **PW6** (Katongo Nsofu) also confirmed this relationship at pages 32 to 34 of the Record of Appeal. That in fact, technically, the Appellant was for all intents and purposes the hiring client as far as **PW6**’s Law Firm, Messrs Katongo & Company, was concerned.
- 2.11. That all the communications between the Appellant and **PW6** were later ratified and confirmed by the disclosed main Principal namely, Curzon Global Hong Kong Limited, via e-mails as shown on pages 33 and 34 of the Record of Appeal.
- 2.12. Counsel submitted that paragraph two on page 33 of the Record of Appeal is very categorical and instructive. That **PW6** informed the trial Court that a fee mandate agreement was signed between the three parties, namely himself, the Appellant and Curzon Global Hong Kong Limited. It was submitted that the Court will note that this is in conformity with the legal practice and trade.
- 2.13. Counsel submitted that it is also clear that instructing a Law Firm to do debt collection is not illegal, and equally, it is not illegal for an agent to be paid for services by his principal. Counsel submitted that this Court will agree that paragraphs 4 and 5 on page 33 clearly demonstrates that **PW6** was being instructed by Mr. Lee Zhou on behalf of Curzon Global Hong Kong Limited as

to how to disburse the money that the Zambian Government or some of its Ministries begun to pay.

- 2.14. Counsel submitted that on page 34 in the first paragraph of the Record of Appeal, **PW6** informed the trial Court below how more instructions were given to him by Curzon Global Hong Kong Limited on who to pay. That these instructions continue all throughout page 34 of the Record of Appeal. It was contended that this Court will take judicial notice that whenever a Lawyer is holding money for his client in the [Client Account], that money is held in Trust; it is payable to the client upon demand; and the client can direct the lawyer who to pay on behalf of the client.
- 2.15. It was submitted that with respect to the trial Court below, **PW6** did not have a choice in the matter once Curzon Global Hong Kong Limited gave him instructions. That as can clearly be seen from the instructions received by **PW6** from pages 33 to 34, the Appellant was named as one of the beneficiaries to be paid by Curzon Global Hong Kong Limited. Counsel submitted that there was not an ounce of illegality in all these payments.
- 2.16. It was Counsel's contention that the trial Court below fell into grave error when it failed to appreciate the principles that govern the law of Agency. Counsel submitted that on pages 186 to 187 of the Record of Appeal in the last paragraph, the trial Court had this to say on Agency:

“What is surprising is that there was no agreement showing that Accused had been appointed as an

agent of Curzon Global as according to him he had been appointed by Emma Nakanyika whom he never brought to Court to confirm the appointment or even for his fees to be paid to him and how. How did he get such monies? What agent duties did he do for him to get such monies.”

2.17. Counsel contended that these findings by the trial Court were very prejudicial and totally unsupported by the evidence. That as alluded to above, “Agency Contracts” can be entered to in writing and orally. That Curzon Global Hong Kong Limited had an agency agreement with the Appellant that is why each time **PW6**’s Law Firm was paid by the Zambia Government, they instructed **PW6** on how much to pay to the Appellant. It was submitted that once the Zambian Government paid **PW6**’s Law Firm, Curzon Global Hong Kong Limited had every right to instruct **PW6** on who to pay with or without explanation.

2.18. Counsel quoted the finding by the trial Court at page 187 in paragraph three as follows:

“The monies have no explanation where they went or how the accused used the money, this can be said to have been realized directly or indirectly acquired property.”

2.19. In reference to the above, Counsel submitted that the trial Court totally misdirected itself into thinking Curzon Global Hong Kong Limited owed the Court an explanation as to why the Appellant

- was being paid. That this was an error at law because Curzon Global Hong Kong Limited was not facing any criminal charges.
- 2.20. It was submitted further that having appointed the Appellant as their agent, Curzon Global Hong Kong Limited may have had other jobs or functions that the Appellant needed to perform for the Company.
- 2.21. Counsel contended that the Appellant did not owe a duty of disclosure to the trial Court. That besides, the money was not illegally obtained, it was coming from a legitimate source being the Zambian Government. That Courts have no authority to police citizens over how they spend their money.
- 2.22. It was submitted very strongly that the trial Court lamentably failed to appreciate that the Appellant was not involved in how Curzon Global Hong Kong Limited was awarded the supply contracts for Zambia Army or Zambia Airforce. That the Appellant got involved only when he was hired to find lawyers so that the unpaid debt by the Zambia Government could be recovered. It was argued that there was nothing illegal about that, and that was how **PW6**'s Law Firm was hired.
- 2.23. Counsel submitted that the trial Court below completely misconceived the Law of Agency and the Appellant's constitutional rights with regard to entering into a private contract, being paid and how a citizen uses his privately earned money. That on page 187, at the penultimate paragraph, the trial Court made this finding:

“According to Accused he did possess these monies as the local agent of Curzon Global but there is nothing to show that the monies were meant for Curzon Global who had won the case after suing the state. What is on record was PW6’s firm Katongo and Company was receiving instructions to pay Muchinga Procurement or indeed accused...there is no evidence of how this money was used. Accused as suspected should have explained where he took the said money notwithstanding it was brought or gotten from the suit, but decided to keep silent when the investigators were interviewing him.”

- 2.24. It was submitted, with the greatest respect to the trial Court, that money that is legitimately earned by a citizen or a juristic person belongs to that person. That there is no law that required “a person” to explain how he spends such money.
- 2.25. Counsel argued that this Country is not a police state, and the Appellant, as an individual, and Curzon Global Hong Kong Limited, did not owe the investigators any explanation as to how their money was used.
- 2.26. Counsel contended that the Appellant cannot be said to have possessed proceeds of crime when it is abundantly clear that the money he received was paid by the Zambian Government via Messrs. Katongo & Company after Court process was initiated. Counsel argued that this is where the Court below lost direction. That this was not illegal and in fact, it is common in business.

- 2.27. Counsel submitted that the method used by Curzon Global Hong Kong Limited in paying the Appellant was a matter agreed between the Appellant, the Company and **PW6**'s Law Firm, and this was not illegal. It was argued that Lawyers act on instructions from their clients and this is how **PW6** was able to pay the Appellant. It was contended that there has been no evidence that such instructions were illegal or indeed cancelled.
- 2.28. Counsel contended that for the trial Court, therefore, to hold that the monies the Appellant was paid was proceeds of crime is shocking. Counsel referred the Court to page 187 of the Record of Appeal (last paragraph) where the trial Court said this:

“The issue to be resolved is these monies reasonably suspected to be proceeds of Crime. It is not in dispute accused possessed money which he could not explain why he was given such money and he used it.”

- 2.29. It was contended that the trial Court below misdirected itself because it believed the testimony of **PW8** (Kombe Joseph Mungila) when he informed the Court below at page 55 of the Record of Appeal that:

“I am aware Accused was appointed as an agent of Curzon Global....and his obligation was not to collect the funds for Curzon Global. Accused’s obligation as an agent was to make sure that the items to be delivered to ZAF and Zambia Army were delivered and not to collect funds on behalf of Curzon Global.”

2.30. Counsel submitted that under cross examination from pages 56 to 58 of the Record of Appeal, **PW8** makes a lot of concessions. Counsel invited the Court to specifically look at page 58 of the Record of Appeal where **PW8** in answer to questions had this to say contrary to his earlier testimony:

“I never came across letter dated 20/7/2015 in the sum of K980,000.00. K980,000 came from Katongo and Company as debt collection from ZAF the amount in count 2. This unmarked document is a letter from Katongo & Company dated 17/11/2015 to Barclays Bank. The reference was transfer of funds to Aldophus [sic] Mubanga in the sum of K525,954 the amount in count 3. These were funds collected on behalf of Curzon Global by the agent Aldophus [sic] Mubanga. My reasonable suspicious I told court that the source of the funds was illegitimate. The source, I mean where the money was coming from Curzon Global money then came from Katongo and Company and went to Aldophus [sic] Mubanga. These monies were from Ministry of Defence and ZAF. Before Accused got the money it was with Katongo & Company as Katongo & Company was clean as accused is the one who engaged Katongo & Company to collect funds on behalf of Curzon Global. According to the documents I came across, accused was engaged to collect funds on behalf of Curzon Global.”

- 2.31. Counsel submitted that the trial Court below developed serious tunnel vision and completely refused or neglected to accept this evidence. It was submitted that the source of the money that the Appellant was receiving was from the Zambian Government, either ZAF or Zambia Army. It was argued that how then can such money raise suspicion? How can such money be proceeds of crime? How did the Court below bring into play Curzon Global Zambia Limited, which was only incorporated on 21st April, 2016?
- 2.32. Counsel submitted that at page 190 of the Record of Appeal, at paragraphs 1, 2 and 3, the trial Court misdirected itself by interchanging Curzon Global Hong Kong Limited, with Curzon Global Zambia Limited, thereby arriving at totally erroneous conclusions.
- 2.33. Counsel submitted that on page 191 at paragraph 3, the trial Court went off the rails of justice by delving into private contractual Agency Agreement between the Appellant and Curzon Global Hong Kong Limited. That as alluded to before, the Appellant and his Principal cannot be asked to explain how they decide to use legitimately earned money; that there is no law that gives any Government Agency or Court such powers.
- 2.34. It was argued that citizens, just like juristic persons, are free to earn money legally and spend it by paying whomever they want. That the fact the Appellant was paid as an Agent is not a crime.
- 2.35. Counsel submitted in conclusion that Ground One to Four must succeed and the Convictions on Count 2 and 3 quashed.

- 2.36. Counsel proceeded to argue **Grounds Five** and **Six** together as they relate to the findings by the trial Court below in relation to Count 1 of the indictment.
- 2.37. Counsel submitted that for the avoidance of doubt, Count 1 relates to a cash deposit of K4,050,000.00 made by the Appellant between 1st June, 2021, and 30th August, 2021.
- 2.38. Counsel from the outset, asked this Honourable Court to take cognisance of the time line of events that he would be submitting on. Counsel stated that the money in Count 1 relates to the Appellant's personal accounts held at First National Bank, Industrial Branch.
- 2.39. Counsel submitted that "**PW1**", Jason Silwamba, on page 4 of the Record of Appeal at paragraphs 2 and 3, informed the trial Court that:

"They requested for interest on the deposit of K4,050,000 made on 26th June, 2021 and requested also for transfer that was made of K1,368,600,00 from his Kwacha account to his dollar account equivalent to \$60,000 dollars.

They also requested for information on the transfer for K2,680,000.00 which was made from the kwacha Account to Pradym Corporation on 28/6/2021. They also requested for information for the transfer...made from the dollar account on 30/6/2021 of \$50,000.00 paid to China Jishin Import and Export Corporation in China."

2.40. It was Counsel's submission that this is the only witness from the Prosecution that discussed Count 1. That the other assumptions and inferences were made by **PW8**, the Investigations Officer. That at page 51 of the Record of Appeal running to page 52, this is what **PW8** said in relation to Count 1:

"I extended my investigations to FNB where I served warrants to inspect banker's books in respect of Adolphus Mubanga to request for the bank statement and mandate file.

Mr. Jason Silwamba a Banker at FNB availed us these documents and I analyzed the documents and discovered that Mr. Adolphus Mubanga had two accounts held at FNB and these are Kwacha and Dollar Accounts.

Both accounts were analyzed... I discovered that the amount had been credited by Adolphus Mubanga by depositing K4,050,000.00 at the counter cash at FNB Industrial Branch.

The transaction is on 26/6/2021. The money was being deposited in the same period when Curzon Global received a total of K104,000,000.00 from the Ministry of Finance between the period of 2020 and 2021.

This was confirmed by the person I interviewed from MOF. Mr. Kafunti who was at that time Assistant

Director and now Director of Finance at Police Headquarters.”

2.41. Counsel submitted that this Court will observe that this is the only piece of investigation that **PW8** conducted in relation to Count 1.

2.42. It was submitted that **PW7**, Mr. Kafunti Chilambi’s testimony runs between pages 39 to 42 of the Record of Appeal and under cross examination, at page 42, **PW7** concludes as below:

“No issue had arisen saying that these monies were proceeds of Crime. The monies going to Curzon Global from government were not from proceeds of Crime. The money paid to Curzon Global and later paid to someone else is not proceeds of Crime”.

2.43. Counsel submitted that **PW7** was never re-examined by the State.

2.44. Counsel respectfully invited this Court to re-look at the testimonies of **PW6**, Katongo Nsofu, from pages 33-34 of the Record of Appeal, in relation to the evidence of **PW2**, Therisa Muma Mwelwa, at pages 11 – 14 of the Record of Appeal. That this is where the time line in this case becomes extremely important. Counsel contended that what both **PW2** and **PW6** established is that at some point the Government payments ceased to come via **PW6**’s Law Firm. It was submitted that in fact, at page 34 of the Record of Appeal, **PW6**, in paragraph five had this to say:

“No further funds were recovered on our re-appointment and we again in 2020 received

communication from Curzon Global that they were terminating the agreement and would make their own follow ups on recovery.”

- 2.45. Counsel submitted that clearly, any money that was paid to Curzon Global Hong Kong Limited after that period, **PW6**'s Law Firm was not involved; that this was 2020 going forward.
- 2.46. It was submitted that the trial Court below had accepted as a fact that Curzon Global Zambia Limited was incorporated on 21st April, 2016. That the Directors were Mrs. Emma Nkanyika and Miss Annie Chisanga. That the Appellant was neither a Director nor Shareholder of this juristic entity, and was merely appointed as an agent of Curzon Global.
- 2.47. Counsel submitted that this evidence is found at page 103 of the Record of Appeal, when the Appellant opened his defence. That this Court will note that the Appellant could not be appointed as an agent of Curzon Global Zambia Limited until after the Company had been incorporated in 2016.
- 2.48. It was submitted that this is what the trial Court failed to appreciate; that the Appellant was initially appointed an agent by Curzon Global Hong Kong Limited, being represented by its Financial Director, Mr. Francis Lee Zhou. That when Curzon Global Zambia Limited was incorporated in 2016 as a sister Company to the Hong Kong Company, the local Zambian Company also appointed the Appellant as it's agent.
- 2.49. It was submitted that this is what the Appellant was saying to the trial Court at page 103 of the Record of Appeal when he said:

“I was engaged as an agent by Curzon Global by Emma Nakanyika the director of Curzon Global. I was engaged as an agent to help in monitoring goods that were supplied to the government; that is the Ministry of defence.

I was also engaged to help on checking on payments for the goods that were supplied. The parties were Ministry of Defence and Curzon Global; as Curzon Global had a lot of contracts.

Curzon Global fulfilled the contracts awarded to it but the Ministry of Defence did not fulfil the side of their contract regarding payments.

Curzon Global decided to chase the monies owed to them by using a law firm Katongo & Company.... I would liaise on the matter from time to time.”

- 2.50. It was Counsel’s submission that the trial Court deliberately failed to appreciate the TIME LINE OF THE EVIDENCE (Emphasis theirs). That the Appellant did not understand the legal implications of his testimony, but the Court below should have.
- 2.51. Counsel submitted that it is not in dispute that the Cause Number for the case between Curzon Global Hong Kong Limited and the Attorney General in the Kitwe High Court is 2015/HK/421. That at that time, Curzon Global Zambia Limited had not been incorporated, so, the Appellant, when talking about being an agent he was referring to this **AGENCY AGREEMENT**

(emphasis theirs) with the Hong Kong Company that was awarded the procurement with ZAF and Zambia Army.

- 2.52. Counsel submitted that when the Appellant was appointed as an agent for Curzon Global Zambia Limited, this was a separate Agency Agreement although relating to the chasing up of payment or debt collection against the Zambia Government. That in principle therefore the Appellant was an agent for two legal juristic persons, one based in Hong Kong, and the other based in Zambia.
- 2.53. Counsel submitted that the law is very clear where two or more inferences over the same facts seem to contradict. That in the case of **Dorothy Mutale and Richard Phiri** ⁽²⁾, the Supreme Court had this to say:
- “Where two or more inferences are possible, it has always been a cardinal principle of criminal law that the Court will adopt the one which is more favourable to an Accused if there is nothing in the case to exclude such inference.”***
- 2.54. That in keeping with this instruction, in the case of **George Nswana Vs The People** ⁽³⁾ at page 179 specifically, the Court adopted this principle by binding itself to already set authorities; the Court chose to take the inference more favourable to the Accused Person.
- 2.55. From the above, Counsel contended that the State was obliged to prove that the Appellant “received, possessed, concealed,

disposed of or brought into Zambia any money, or other property, that may reasonably be suspected to be proceeds of crime.”

2.56. Counsel submitted that the Appellant, at pages 106/7 of the Record of Appeal, had this to say to the Court below:

“The Ministry of Defence ceased making payments on goods received. Curzon Global instructed Katongo & Company to [sue] the Government of the Republic of Zambia and Judgment was in favour of Curzon Global [in cause No.] 2015/HK/421 for the sum of [K]4,602,000.00 US dollars and Judgment was with interest and legal costs.

The Ministry of Justice was engaged on the settlement of [t]his amount owed to Curzon Global.

One of the payments made to Curzon Global, I was paid K4,050,000.00 by Curzon Global. I was paid by Curzon Global K4,050,000.00 as an agent.

The monies came to me as an agent of Curzon Global.”

2.57. Counsel respectfully asked this Court to again recall the time line and submitted that **PW6**’s Law Firm was not involved in the payments that Curzon Global received from the Ministry of Finance after 2020 and referred us to the penultimate paragraph at page 34 of the Record of Appeal. It was submitted that this evidence is corroborated by **PW7** at page 41 of the Record of Appeal under cross examination in the last five lines when he said:

“The first payment was paid by Ministry of Finance in 2020. I told Court that TSA was established the payments came from Ministry of Finance.”

2.58. That at page 42 of the Record of Appeal, **PW7** repeatedly and categorically told the Court below that:

“The monies going to Curzon Global from government were not from the proceeds of Crime. The money paid to Curzon Global and later paid to someone else is not proceeds of Crime.”

2.59. Counsel contended that yet the Court below at page 189 of the Record of Appeal in paragraph two says this:

“So where did this money K4,050,000.00 come from for it to raise reasonable suspicious which accused has to explain how he was found with such a large amount of money.”

2.60. It was Counsel’s submission that the Court below fell into error when it failed to analyze the totality of the evidence before it. That it is abundantly clear that the K4,050,000.00 came into the Appellant’s possession as his commission from duties performed as an agent.

2.61. It was contended that the Appellant is not a director, or shareholder in both the Curzon Global Companies in Zambia or Hong Kong. That therefore, how the Government paid its debt to Curzon Global Hong Kong Limited after 2020, was not something the Appellant was privy to.

2.62. Counsel submitted that the undisputed facts are these:

- After 2020, Katongo & Company did not receive payments on behalf of Curzon Global Hong Kong Limited;
- The Government of the Republic of Zambia commenced paying Curzon Global Hong Kong Limited after the Ministry of Justice and the Ministry of finance verified the debt;
- After receiving payment from Government, Curzon Global Hong Kong Limited paid the Appellant K4,050,000.00 as commission, being its agent; and
- The source of the money in all these payments was the *Zambian Government*.

2.63. Counsel submitted that this Court will take judicial notice that the *Zambian Government* does not deal in crime, nor engage in illegal activities to raise money. So, how did the Court below arrive at the conclusion that the K4,050,000.00 the Appellant deposited in his Bank Account was from proceeds of Crime?

2.64. That simply put, the Court below believed **PWS**'s view that he had a reasonable suspicion over this money. Counsel submitted that in the third paragraph from the bottom of page 193 of the Record of Appeal, the Court below asks this question:

“How much was paid to Curzon Global for accused to get K4,050,000 at what percentage was this fee?”

2.65. Counsel submitted that **PWS** had a duty to investigate this issue, since he was the one who entertained the reasonable suspicion, but unfortunately, he did not. It was submitted that in the case of **The People Vs Chrison Mwambana** ⁽⁴⁾ the Court had this to say:

“It is not the function of the Police to secure conviction. Their duty once the offence is suspected to have been committed is to investigate the matter as fully as possible and to pursue every line of inquiry which may help throw light on it irrespective of whether any particular line appears prejudicial or favourable to the suspect.”

2.66. That in being consistent, it was submitted that the Supreme Court in the case of **Peter Yotamu Hamenda Vs The People** ⁽⁵⁾ stated thus:

“Where the nature of a given case necessitates that a relevant offence must be investigated but the investigating agency fails to investigate in circumstances amounting to a dereliction of duty and...the accused is seriously prejudiced because the evidence which might have been adduced, the dereliction of duty will operate in favour of the accused and result in an acquittal.”

2.67. That again, in the case of **George Lipepo and Others Vs The People** ⁽⁶⁾, the Supreme Court said as follows:

“It is during this investigation that all relevant evidence both favourable and unfavourable to the State must be gathered. During the prosecution case the evidence so gathered must be presented to the Court so the Court can arrive at a just decision. Failure on the part of the agencies to diligently

execute the said responsibility amounts to dereliction of duty. If the dereliction goes to the core of the prosecution evidence, such dereliction will operate in favour of the accused and may result in acquittal.

2.68. Counsel submitted that there is no doubt that the Court below believed **PW8**'s evidence when he informed the Court that he had "reasonable suspicion" about the K4,050,000.00 the Appellant deposited in his FNB Account; that yet **PW8** provided no evidence about his suspicions.

2.69. It was submitted that **PW8** had the power and authority to get warrants against Curzon Global Zambia Limited's Bank Accounts and inspect them. That **PW8** should have investigated the payments that the Ministry of Finance was making or indeed made to Curzon Global Hong Kong Limited after 2020 when Messrs. Katongo & Company was not involved in receiving payments; this was not done.

2.70. Counsel repeated their position alluded to above that the Appellant was merely an agent and he had no authority to interrogate the Bank Account of his appointing Principals. Counsel submitted that this authority rested with **PW8**, yet this was not done. That this failure to investigate is what made the trial Court conclude at page 195 of the Record of Appeal in the second paragraph that:

"As regards the 2021, its clear accused got the K4,050,000 as he never produced any document the

way he did for “PP1” and “PP2” ...there is no evidence he received from PW6... the K4,050,000.”

2.71. Counsel submitted that this Court will observe that “**PP1**” and “**PP2**” were Bank Statements belonging to the Accused, not Curzon Hong Kong Limited or Curzon Global Zambia Limited. It was contended that this duty fell on **PW8** to collect this evidence. Counsel contended that this serious dereliction of duty seriously prejudiced the Appellant in the Court below because the Appellant was not in charge or control of the Account belonging to his hiring Principals.

2.72. Counsel submitted that the Appellant informed the trial Court that the K4,050,000.00 paid to him was agency fees. That there is no law that makes such payment illegal, and begs the question why this payment was even suspicious to **PW8**? That the Appellant gave the explanation that he had.

2.73. It was argued that it is not illegal to be paid for contractual agency works. Counsel asked, where did **PW8** get his suspicion? Why did the trial Court believe **PW8**'s suspicion without any proof? Why did the Court below erroneously conclude that the money the Appellant was paid came from proceeds of crime?

2.74. Counsel submitted that there were other possible answers as to the source of this money. That **PW7** had told the Court that the money was from the Ministry of Finance and the Appellant also said the same. It was submitted that the Court below was given an explanation as to the source of money, namely the K4,050,000.00. That the fact that **PW8** was not happy with that

- explanation is a serious dereliction of duty and failure to investigate further.
- 2.75. Counsel for the Appellant submitted that **PW8** misdirected the Court below because he decided to adopt a very myopic vision in his investigation and closed his mind to other possibilities being the source of money, even when he was told by **PW7**. Counsel contended that this failure to investigate by **PW8** must be weighed in favour of the Appellant.
- 2.76. It was argued that the source of the K4,050,000.00 the Appellant deposited in his FNB account was from Curzon Global Hong Kong Limited who were his Principal in an Agency Agreement. That this money was paid to Curzon Global Hong Kong Limited by the Ministry of Finance after 2020, having obtained a Default Judgment against the Attorney General in 2017. That there is no evidence linking this money to any crime or illegal business.
- 2.77. It was Counsel's submission that the trial Court below erred in law and fact by convicting the Appellant on Count 1 in the indictment. That the Court below ignored clear cogent evidence from **PW7** as to the source of money that ended up with the Appellant and yet believed **PW8** who merely entertained a flimsy suspicion against the Appellant.
- 2.78. Counsel urge this Court to quash the Conviction of the Appellant on Count 1 as the money he possessed was not from any illegal activity and therefore cannot be proceeds of crime.
- 2.79. In conclusion, Counsel submitted that the Court below fell into grave error by convicting the Appellant. That the source of the

money the Appellant possessed or was paid by Katongo & Company or by Curzon Global Hong Kong Limited as his Principal at law was never proceeds of crime, nor was any part of that money ill gotten.

3. RESPONDENT'S HEADS OF ARGUMENT IN RESPONSE

- 3.1. The Respondent filed its Heads of Argument in Response on 16th December, 2024.
- 3.2. Counsel submitted with regards to **Ground One** that the Lower Court was on firm ground when it convicted the Appellant of the offence of possession of property reasonably suspected to be proceeds of Crime, notwithstanding the absence of the physical property before the Court during trial.
- 3.3. Counsel stated that **Section 71(1)** of the **Forfeiture of Proceeds of Crime Act No. 19 of 2010** criminalizes the receipt, possession, concealment, disposal of, or bring into Zambia, any money or other property that may reasonably be suspected of being proceeds of crime (emphasis theirs). It was submitted that the above position of the law was re-affirmed in the case of **The People Vs. Austin Liato** ⁽⁷⁾.
- 3.4. Counsel submitted that **Black's Law Dictionary** defines 'possession' as:

“The detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and

either held personally or by another who exercise it in one's place and name."

- 3.5. It was Counsel's submission that under the above element, it must be established that the Appellant was in possession of the property at the periods stated in the indictment. That to this end, various witnesses testified to the Appellant having had possession of the property in the indictment at the stated periods.
- 3.6. Counsel submitted that in Count 1, **PW1** testified that the Appellant made a deposit of K4,050,000.00 cash in his Bank Account held at FNB on 26th June, 2021. That he also testified that the Appellant then made several transfers from that Account such as K1,368,600.00 on 26th June, 2021, from the said Account to his Dollar Account and K2,680,000.00 on 28th June, 2021.
- 3.7. It was submitted that the evidence from **PW1** demonstrates that the Appellant was in possession of the sum of K4,050,000.00 which appears on the indictment, which he deposited over the counter. That Bank Statements evidencing the above deposit were also produced in the Lower Court and were marked as shown at page 243 of the Record of Appeal.
- 3.8. Counsel submitted that further, the Appellant, himself, admits to being in possession of the said K4,050,000.00 and making the cash deposit as per page 108 of the Record of Appeal.
- 3.9. It was submitted with regard to Count 2, that **PW2** testified that an amount of K980,000.00 was credited into the Bank Account for Muchinga Procurement Limited, held at Intermarket Bank, on

the 20th of July, 2015, by **PW6**. That **PW6** produced the Bank Statement, **P4**, as proof of the credit as shown at page 249 of the Record of Appeal. That he then added that the sole signatory to the said Account was the Appellant as per the mandate file.

3.10. It was Counsel's submission that as a sole signatory, he had exclusive control and authority over the Account, and he therefore, had possession of the money in the said Account.

3.11. Counsel submitted that the Appellant also admitted being in possession of the said money on page 110 and further admits to being the sole signatory of Muchinga Procurement Limited's Account held at Intermarket Bank as shown on page 113 of the Record of Appeal.

3.12. Counsel submitted that with regards to Count 3, **PW3** stated that she accessed the personal Bank Statement of the Appellant in their ABSA Bank system and confirmed that a sum of K525,954.00, whose narration was "Katongo & Company", was credited to the Appellant's personal Bank Account on 17th November, 2015. That she also stated that on 18th November, 2015, a total sum of K300,000.00 was withdrawn and on the 18th November, 2015, a total sum of K220,000.00 was withdrawn from the same Account; and furthermore, the Appellant admits to being in possession of this money as he said on page 110:

"I did have or possess the sum of...K525,954.00"

3.13. Counsel contended that it is clear from foregoing discussion that the Appellant did possess the said money; that the element of possession under the offence has been satisfied.

3.14. Counsel stated that **Section 2** of the **Forfeiture of Proceeds of Crime Act No.19 of 2010** defines proceeds of crime to mean property or benefit that is:

“(a) Wholly or partly derived or realized directly or indirectly, by any person from the commission of a serious offence or a foreign serious offence;

(b) Wholly or partly derived or realized from a disposal or other dealing with proceeds of a serious offence or a foreign offence;

(c) Wholly or partly acquired proceeds of a serious offence or a foreign serious offence;”

3.15. It was submitted that in the case of **The People Vs Edward Jack Shamwana and 12 Others** ⁽⁸⁾, it was held that:

“A Court may take judicial notice of facts which are common knowledge and in doing so may refer to its own record”.

3.16. Further, in **Katuka Vs Electoral Commission of Zambia** ⁽⁹⁾ the Court held that:

“Judicial notice shall be taken from facts which are of “general knowledge” or from “inquiries to be made by himself for his own information from sources to which it is proper to refer”. It was held further that it would be pedantic and futile for a Court to insist on further proof when the facts presented before the Court are that which everyone is fully aware of”.

- 3.17. Counsel submitted that he calls upon this Court to take judicial notice of the fact that the contract between Curzon Global and the Government of the Republic of Zambia was found to be illegal by the Court in the case of **The People Vs Geoffrey Bwalya Mwamba** ⁽¹⁰⁾. That in the said case, Geoffrey Bwalya Mwamba (GBM), who was Minister of Defence for the Republic of Zambia was convicted. That thus, the claim by the Appellant that he was an agent of Curzon Global engaged to collect money on its behalf from the Zambian Government was illegal and does not qualify to be an agency.
- 3.18. It was submitted that it is clear from foregoing discussion that the Appellant did possess the said money which is reasonably suspected to be proceeds of Crime. Counsel contended that the money he possessed was wholly realized directly from the commission of a serious offence by Geoffrey Bwalya Mwamba. That therefore, the Accused's property falls within the definition in **Section 2(a)** of the **Forfeiture of Proceeds of Crime Act No. 19 of 2010**, and it was submitted that the element of possession of property reasonably suspected to be proceeds of crime under the offence has been satisfied.
- 3.19. In **Ground Two**, Counsel submitted that the Lower Court was on firm ground when it arrived at the conclusion that the Appellant person was not an agent.
- 3.20. Counsel referred this Court to G.H.L. Fridman, the author of **The Law of Agency** wherein it was stated that Agency is:

“The relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal’s legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.”

3.21. That simply put, an agent is a person who negotiates and concludes a commercial or business transaction on behalf of someone called the principal with the principal’s express or implied authority.

3.22. That furthermore, **Section 78** of the **Forfeiture of Proceeds of Crime Act No. 10 of 2010** provides that:

“Save as otherwise provided in this Act, any question of fact to be determined by the Court in proceedings under this Act is to be decided on the balance of probabilities.”

3.23. Counsel submitted that the Appellant opened his defence by stating:

“I was engaged as an agent by Curzon Global by Emma Nakanyika, the director of Curzon Global”.

3.24. That however, the evidence showed that Curzon Global was incorporated in Zambia as per the finding of the Court on 21st April, 2016, which was after the Appellant had already received K980,000.00 on 20th July, 2015, and K525,954.00 on 17th November, 2015.

- 3.25. Counsel submitted that as stated earlier, an agent acts for and on behalf of a principal with express or implied authority and in this case, there is no way the explanation of the Appellant, at page 195 of the Record of Appeal, can stand as he could not have been an agent for an entity that did not exist. Therefore, these two amounts could not have been received as agent commissions.
- 3.26. That in addition, the two amounts could not have been fruits of the Default Judgment produced as **ID3** dated March, 2017, under Cause Number 2015/HK/421, as it clearly came years after these particular amounts. That therefore, the Court's finding that there was no agency cannot be faulted on a balance of probabilities.
- 3.27. Counsel submitted that it was also their argument that agency requires evidence of authority, which is typically documented in an agreement or contract. That no such document was presented by the Appellant.
- 3.28. That in fact, the Appellant, at page 109 of the Record of Appeal, stated that he did not tell the Court when he was appointed as an agent for Curzon Global, that he had no document to this effect, and that he could also not tell the Court what the scope of his agreement was nor the remuneration in terms of commissions.
- 3.29. It was submitted that the only piece of evidence he produced in Court was the letters from **PW6** to the Bank to transfer the monies in Counts 2 and 3 to him and Muchinga Procurement Limited. It was contended that these letters from a third party do

not constitute evidence of an agency relationship between the Principal, Curzon Global Hong Kong, and the Appellant, the same way the letter to pay Muchinga Procurement Limited the K980,000.00 did not then become evidence that Muchinga Procurement Limited was an agent of Curzon Global Limited.

3.30. Counsel submitted that it being an international entity, the Appellant could have produced emails, letters or other communication from Curzon Global to himself, asking him to carry out certain actions for them as an agent. That a lack of evidence to this effect coupled with failure to delve into the scope of authority or even the terms of the purported agency relationship lends credence to the conclusion that the trial Court was therefore correct to conclude that the explanation lacked credibility and logical coherence.

3.31. Counsel submitted that it was noted from page 5 of the submissions by the Appellant, that reliance was placed on alleged emails from Curzon Global Limited purportedly meant to act as ratification of the acts of the Appellant by Curzon Global Limited as Principal. That Counsel's response to this is that the said emails were never produced into Court and reliance on them as proof of anything in the matter will fly in the teeth of the rules of production of evidence.

3.32. Counsel stated that the Courts have consistently held that mere assertions, uncorroborated by substantive evidence, are insufficient to rebut a reasonable suspicion of criminality. We were referred to the Supreme Court case of **The People Vs Austin**

Liato ⁽⁷⁾, wherein the necessity for credible and articulable explanations for possession of property suspected to be proceeds of Crime was emphasised. Counsel contended that the Appellant's failure to meet this standard justifies the trial Court's findings.

3.33. It was Counsel's further submission that the Court below was on firm ground when it held that there was no agency agreement as the terms were unclear. That the Appellant failed to show clearly how much his agent fees were and how they were calculated thereby making it difficult to determine the scope of the agent's authority.

3.34. It was stated that in the English case of **In re Mahmoud and Ispahani** ⁽¹¹⁾ it was held that:

“In my view the Court is bound, once it knows that the contract is illegal, itself to take the objection and to refuse to enforce the contract, whether its knowledge comes from the statement of the party who was guilty of the illegality, or whether its knowledge comes from outside sources. The Court does not sit to enforce illegal contracts. There is no question of estoppel; it is for the protection of the public that the court refuses to enforce such a contract”.

3.35. Counsel submitted that therefore the Court is called upon to ensure that illegal contracts or contracts based on an illegality are not recognized and any action [in that regard] should be considered illegal. It was contended that the Appellant draws his

- purported authority from an illegal oral contract, therefore, the Court cannot sit to enforce the purported illegal oral contract.
- 3.36. It was argued that the purported agency agreement is marred with illegality as already established in the **Geoffrey Bwalya Mwamba** ⁽¹⁰⁾ case and was not reduced to writing making it difficult to establish the terms of the agreement in the absence of a proper explanation of the terms by the Appellant.
- 3.37. In **Ground Three**, Counsel submitted that the Lower Court was on firm ground and did not misdirect itself when it made a finding that the money paid to Muchinga Procurement Limited was suspicious irrespective of the fact that Muchinga Procurement Limited was not charged.
- 3.38. It was submitted that the Appellant herein proffers one explanation for being in possession of the K980,000.00 captured under Count 2, being that he was an agent of Curzon Global Limited and received the same as his agent fee. That however, as earlier discussed, this money was not paid to the Appellant directly but to Muchinga Procurement Limited as testified by **PW2** and buttressed by the Bank Account Statement marked **P4**. Further, it has also been established that the said Muchinga Procurement Limited's Bank Account had a sole signatory who was the Appellant.
- 3.39. We were referred to the celebrated case of **Salomon Vs Salomon** ⁽¹²⁾ which firmly establishes the principle that a company is a separate entity from its owners. It was submitted that therefore, the trial Court was not amiss in wondering why Muchinga

Procurement Limited would be receiving this amount of money when they were not an agent of Curzon Global Limited. That the Appellant had his own Bank Account so it was reasonable for the trial Court, at page 191 of the Record of Appeal, to find suspicious a payment allegedly meant for the Appellant as an agent fee being paid to an entity that was not an agent as shown in **IDD2** which the Appellant himself produced before this Court.

- 3.40. In **Ground Four**, Counsel for the Respondent submitted that the Lower Court was correct in law and fact in arriving at the conclusion that the Appellant should have called Emma Nakanyika as a witness, in the absence of any evidence as claimed by the Appellant when he stated that Emma Nakanyika was deceased.
- 3.41. Counsel submitted that the Lower Court was on firm ground when it mentioned that Emma Nakanyika should have been called before Court as a witness because the Appellant alleged that she appointed him as an agent. That it is trite law that he who alleges must prove, and a perusal of the evidence given by the Appellant (pages 103-113 of the Record of Appeal) does not at any point reveal any part where it was mentioned that Emma Nakanyika was late.
- 3.42. Counsel argued that even if that were the case, one of the characteristics of a company is that a company has a separate life outside its members and survives their death as held in the **Salomon Vs Salomon** ⁽¹²⁾ case, *supra*. That the death of a company member will not bring it to an end because the

company's operations are completely separate from those of its members. Counsel submitted that the Appellant had an opportunity to call any representative of the Company as one of his witnesses to provide proof of his claims to agency but in his wisdom, he opted not to.

3.43. In **Ground Five**, Counsel submitted that the Lower Court did not arrive at any conclusion to the effect that the money received by the Appellant was suspicious because he did not explain why he was paid such huge sums of money as 'legal fees'. It was contended that the Appellant is misleading the Court by stating that the Lower Court made such a finding.

3.44. Counsel submitted that a perusal of the Judgment of the Lower Court at pages 157 to 196 of the Record of Appeal indicates that the Court made no such finding nor did it make any reference to 'legal fees'.

3.45. Counsel referred the Court to the case of **Kuta Chambers (sued as a firm) Vs. Concillia Sibulo (Suing as Administratrix of the Estate of the Late Francis Sibulo)** ⁽¹³⁾ which explains that legal fees are costs incurred by lawyers or law firms for the professional services they provide to clients plus disbursements. We are certain that the Appellant is not a lawyer who incurred any costs that merited even an iota of discussion by the trial Court.

3.46. In **Ground Six**, Counsel for the Respondent submitted that the Lower Court was on firm ground when it convicted the Appellant on a charge of being found in possession of property suspected

- to be proceeds of Crime on the basis of the absence of a reasonable explanation as to how the money was disbursed.
- 3.47. Counsel submitted that this element requires the Prosecution to demonstrate “reasonable suspicion”. It was submitted that the Court in the case of **Queensland Bacon Vs. Rees** ⁽¹⁴⁾ defined ‘suspicious’ as a mere idle wondering whether something exist or not. That further, the Supreme Court held in the case of **The People Vs Austin Liato** ⁽⁷⁾, earlier mentioned, that:
- “In our considered view, proof of reasonable suspicion never involves certainty of the truth, where it does, it ceases to be suspicion and becomes a fact”.***
- 3.48. Counsel respectfully submitted that the Court was correct in convicting the Appellant of the offence of possession of property suspected to be proceeds of Crime under the **Forfeiture of Proceeds of Crime Act**. That the evidence before the Court established that the Appellant received K980,000.00 and K525,954.00 into his Bank Account from **PW6**; that the Appellant’s explanation that they arose from the suit and were agent’s fees is not supported by the weight of the evidence as the Default Judgment came a year after receipt of these funds.
- 3.49. Counsel submitted that the Appellant claimed to have acted as an agent for Curzon Global, yet no evidence was provided to substantiate this assertion. Counsel contended that it is a fundamental legal principle that any individual in possession of significant sums of money with questionable origins bears the evidential burden to provide a reasonable and lawful explanation

for such possession. That in this case, the Appellant failed to discharge this burden on the balance of probabilities as required by **Section 78** of the **Forfeiture of Proceeds of Crime Act of 2010**.

3.50. That moreover, the evidence revealed that the Appellant also deposited K4,050,000.00 in cash into his Bank Account with no documentation or trail to account for its origin. Again, there was a claim that it was an agent fee from money paid by the Attorney General. However, Counsel invited the Court to take judicial notice that the payment of such an amount by the Attorney General would not be in cash but through a Bank transfer. That if indeed the Appellant had received it from the Attorney General, he would have provided documentary evidence to this effect.

3.51. Counsel contended that the unexplained possession of such a significant amount in cash, combined with the questionable transfers from the Law Firm, strongly supports the conclusion that the funds were proceeds of crime.

3.52. Counsel submitted that the Appellant at page 113 of the Record of Appeal says:

“The K4,050,000.00 came to me as an agent and not as agent fee.”

3.53. Counsel stated that it is for this reason that the Court reasonably wondered how one who receives money as an agent could not explain how he then forwarded or disbursed the same to the Principal. Counsel maintains that the burden of proof for the

assertion that he was an agent lay on him and he did not discharge the burden as the Court rightly found.

3.54. Counsel submitted that **Section 71** of the **Forfeiture of Proceeds of Crime Act** is clear that possession of property suspected to be proceeds of crime constitutes an offence if no reasonable explanation for its origin is provided. That the Court's reliance on this legal provision, coupled with the absence of any credible defence, was entirely justified.

3.55. Counsel, in conclusion, submitted that it is for the reasons set out herein, that the Respondent supports the Conviction handed to the Appellant and therefore urges this Honourable Court to find no merit in all the Grounds and dismiss the Appeal in its totality.

4. THE HEARING

4.1. The Hearing of the Appeal was held on 25th February 2025, with Counsel for both Parties present.

4.2. In his *viva-voce* submissions, Counsel for the Appellant. Mr. K. F. Bwalya, began by stating a few facts, first of which was that the Government of the Republic of Zambia was not a 'magic' organization that deals in illegal transactions. Secondly, that when the Kitwe High Court passes a Judgment or Order, whatever is derived from this is legitimate unless the Order is quashed or set aside.

4.3. Counsel submitted that from the Record, the contracts between Curzon Global Hong Kong Limited with the Republic of Zambia through the Zambia Air Force and the Zambia Army are not illegal

- contracts and to argue otherwise would be misleading to this Court.
- 4.4. Counsel referred the Court to page 190 of the Record of Appeal and the Judgment of the Lower Court at paragraph 3 and submitted that the holding therein is that there is no evidence that these contracts were not genuine.
 - 4.5. Counsel for the Appellant submitted that the Appellant has been charged with three Counts. That two of the payments in the Counts were made by the Government through the Ministry of Justice before the Judgment of the Kitwe High Court in 2017.
 - 4.6. Counsel referred the Court to documents marked **PP1** and **PP2** at pages 259 and 260 of the Record of Appeal being the letters that deal with the amounts of K525,954.00 and K980,000.00 respectively.
 - 4.7. In addressing Ground Three, Counsel submitted that in the letter marked **PP2**, Katongo & Company, who had been hired by the Appellant on behalf of Curzon Global Hong Kong Limited, were instructing their Bank to pay Muchinga Procurement Limited. That in the letter marked **PP1** at page 259, Katongo & Company were transferring funds to the Appellant. It was submitted that **PP1** refers to the Appellant as the local agent of Curzon Global Limited and the letter marked **PP2** at page 260 does not carry the words local agent.
 - 4.8. Counsel submitted that it is common knowledge at law that a company is a juristic person, with rights, duties and obligations. Counsel argued that the Appellant was superimposed or

interchanged for the Company, namely Muchinga Procurement Limited. That Katongo & Company transferred K980,000.00 to the said Company, but it was the Appellant who was charged and that this was a gross misdirection.

- 4.9. Counsel contended that **Section 213** of the **Criminal Procedure Code, Chapter 88** of the **Laws of Zambia**, places a duty on a Court hearing a matter to ensure that the evidence links a person appearing before it and that the duty is also placed on the Prosecution to either amend, alter, or substitute a charge on the indictment to reflect the correct person. That in this case, the charge on the indictment was on the Appellant that he possessed K980,000.00, when clearly the transfer by Katongo & Company went to Muchinga Procurement Limited.
- 4.10. Counsel submitted that two positions arise from the above. Firstly, that a lawyer cannot refuse instructions from a client as to who to pay from monies held on the client's behalf. That Katongo & Company was directed who to pay by Curzon Global.
- 4.11. Further that at pages 255 and 256 of the Record of Appeal, the State in this case produced a document that shows that Muchinga Procurement Limited is a legal person. Counsel urged us to take judicial notice of the case of **Salomon Vs Salomon** ⁽¹⁵⁾ in submitting that pursuant to **Section 16** of the **Companies Act No. 10 of 2016**, the corporate veil of Muchinga Procurement Limited was never pierced for the amount of K980,000.00 to be placed on the Appellant.

- 4.12. Counsel submitted that the Lower Court failed to alter, amend or substitute the correct party as having possessed the K980,000.00; that it was the Appellant, and not Muchinga Procurement Limited who was erroneously convicted in Count 2. Counsel contended that the trial Court below fell into grave error when it failed to interchange or superimpose the Appellant for or with Muchinga Procurement Limited. In so submitting, Counsel referred the Court to **Section 213** of the **Criminal Procedure Code** and the Supreme Court holding in the case of **Joshua Lungu Vs The People** ⁽¹⁶⁾, wherein it was held that it is fatal during a trial for a Court not to amend, alter or substitute a defective charge and that will render the case a nullity leading to an acquittal.
- 4.13. It was Counsel's contention that in *casu*, the wrong person was charged, there was no substitution, amendment or retaking of plea; that the conviction of the Appellant was wrong on the law and fact.
- 4.14. With regard to the second payment of K525,954.00, Counsel submitted that the Record of Appeal at page 259 shows that the Appellant was paid the said monies through Katongo & Company as an agent of Curzon Global Hong Kong Limited.
- 4.15. That at page 36 of the Record of Appeal, the source of the money in Counts 2 and 3 is explained by **PW6**, who is Counsel hired by the Appellant on behalf of Curzon Global Hong Kong Limited, that the said monies came from Ministry of Justice in 2015. That the source of the monies is the Government of Zambia paying for

goods supplied to the Zambia Army and Zambia Air Force, and that this money is legitimate as no government deals in illegalities.

- 4.16. That based on the forgoing, the monies that the Appellant received and was paid to Muchinga Procurement Limited was not tainted.
- 4.17. In terms of timelines, Counsel submitted that in 2017 the Judgment of the Kitwe High Court was obtained against the Government of the Republic of Zambia for delays in payment and the same has not been appealed against, set aside or quashed. That it was from this Judgment that the K4,050,000.00, which the Appellant deposited came from.
- 4.18. Counsel submitted that after 2020 or between 2020 and 2021, the Government paid Curzon Global Limited K1,400,000.00 towards the Judgment from the Kitwe High Court. Counsel argued that at what point was the payments from a Judgment of the Court suddenly tainted because the Appellant touched it. That the Lower Court misdirected itself when it held that this money was tainted with illegality.
- 4.19. Counsel submitted that one of the arguments by the Respondent in their Heads of Argument is that the monies in question came from an illegal contract and that they relied on the decision of the Magistrates Court in another matter, namely **The People Vs Geoffrey Bwalya Mwamba** ⁽¹⁰⁾, wherein it was found that the Curzon Global Hong Kong Limited contracts were illegal.

- 4.20. Counsel argued that in this particular case, the Record will show at page 190 that the said contracts were genuine and the Magistrate said the contracts were genuine.
- 4.21. Counsel contended that there are two positions where Courts of similar jurisdiction are conflicting themselves on the same Curzon Global Hong Kong contracts. That there is a High Court decision at page 261 of the Record of Appeal which granted Curzon Global Hong Kong Limited US\$4,602,792.58 and there is no appeal to date. Counsel submitted that when a Court of original jurisdiction such as the High Court gives a judgment, unless it is set aside, appealed against or quashed, that judgment must be obeyed and that it is a legitimate judgment. It was argued that the Judgment of the Subordinate Court flies in the teeth of *stare decisis*.
- 4.22. In conclusion, Counsel submitted that this Appeal is on *terra firma* such that there is no need for the Appellant to be convicted.
- 4.23. Counsel for the Respondent, Mr. S. Banda, highlighted a few issues to supplement the Arguments tendered and submitted that the case in Kitwe which Counsel for the Appellant referred to is a civil matter and the case before this Court and the Subordinate Court is a criminal matter and that these differ in terms of standard of proof. That in civil matters it is on a balance of probability, whereas in criminal matters, it is proof beyond reasonable doubt. That a civil matter cannot bind this Court.
- 4.24. Counsel submitted that at page 165, there is an amount of K4,050,000.00 which was deposited in cash by the Appellant on

26th June. 2021, with the description stating ‘Maize, soya and beans’. That the description did not say ‘Commission from Curzon Global’. It was argued that this clearly shows that the Appellant chose to put this description and there was an intention as to why he put this description. That this amount so deposited is in contention.

4.25. In Reply, Counsel for the Appellant, Mr. K. F. Bwalya, submitted that the argument by the State with regard to the K4,050,000.00 and the description of ‘Maize, soya and beans’ at page 243 of the Record of Appeal, shown on **P2**, was never the question that was discussed in the Court below and none of the witnesses were asked to explain it.

4.26. Counsel submitted that since Counsel for the Respondent has decided to explain it, the Appellant’s explanation was that the money was meant for purchase of the descriptions, that is, maize, soya and beans. That this does not change the argument as to the source of the money as explained by the Appellant that the source was Ministry of Finance.

4.27. Counsel maintained his earlier submission that the Court below fell into error by refusing to accept that the source of the money was the Government of the Republic of Zambia and nowhere between the Government paying Curzon Global Hong Kong Limited and the money eventually landing in the hands of the Appellant did it become tainted with illegality. That the only evidence presented was **PW8**, the Arresting Officer, telling the Court that he entertained a reasonable suspicion.

- 4.28. Counsel submitted that the time line is important. That after the first two payments which were paid through Messrs. Katongo & Company as shown at pages 259 and 260 of the Record of Appeal, there is no other huge deposit that the Appellant made except after the Default Judgment in 2017.
- 4.29. Counsel referred the Court to pages 40 to 41 of the Record of Appeal and submitted that this Prosecution witness made it clear that there was no money paid until after January, 2020.
- 4.30. Counsel argued that the only time the Appellant had access to money was when the Government paid and when Katongo & Company was paid. That the Appellant's explanation as to the source of the money still holds.

5. CONSIDERATION AND DETERMINATION OF THE COURT

- 5.1. We have considered the Appellant's Grounds of Appeal and the Heads of Arguments filed by the Parties respectively. We are grateful to the Parties for their *viva-voce* spirited arguments and authorities.
- 5.2. The Appellant was found guilty in the Lower Court of 3 Counts of possession of property suspected to be proceeds of crime contrary to **Section 71(1)** of the **Forfeiture of Proceeds of Crimes Act, No. 19 of 2020** (FPOCA) and was sentenced to two (2) years imprisonment for each Count to run concurrently.
- 5.3. The Appellant, by way of Notice of Appeal dated 3rd December, 2023, has appealed both the Conviction and Sentence and tendered six (6) Grounds of Appeal.

- 5.4. The Appellant, in **Ground One** argues that the Lower Court erred in law and in fact when it convicted the Accused on a charge of being found in possession of property suspected to be proceeds of crime when there was no such property before Court.
- 5.5. Though there were no specific arguments tendered in the Appellant's Heads of Arguments that dealt with this Ground, the Respondent responded by stating that possession, which is the crux of the Lower Court's decision, has been established. Counsel for the Respondent submitted that the Appellant was in possession of the Property at the periods stated in the indictment and that various witnesses, including the Appellant, testified to this.
- 5.6. **Section 71** of the **FPOCA**, which creates the offence, states as follows:

“(1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Zambia any money, or other 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;” (Emphasis ours)

- 5.7. Perusal of the Record of Appeal shows that **PW1** testified, in relation to Count 1, to the fact that the Appellant deposited K4,050,000.00 cash in his FNB Bank Account on 26th June, 2021

and made several transfers thereafter. The Bank Statement evidencing the above transactions was produced in the Lower Court as **P1**.

- 5.8. In Count 2, **PW2** testified to the amount of K980,000.00 being credited into the Bank account of Muchinga Procurement Limited held at Intermarket Bank by **PW6** on 20th July, 2015, and produced Bank Statement, **P4**, as proof of the same. Further that the Record of Appeal shows that the Appellant is a Director in the said Company as per **P5**, being the PACRA Printout; and that the Appellant, as per the Bank mandate file, is the sole signatory to the said Account, thus having exclusive control and possession over the Account and the said K980,000.00 deposited therein.
- 5.9. As regards the K525,954.00 in Count 3, **PW3** testified to the effect that the Bank Statement for the Appellant's Absa Bank Account shows that the said amount was credited to the said Personal Account followed by a couple of transactions made thereon.
- 5.10. As stated earlier, the Appellant, in his testimony in the Lower Court, has not denied being in possession of the monies in Counts 1, 2 and 3.
- 5.11. Based on the forgoing, we agree with the Respondent's assertions that the Appellant did possess the said monies at the periods stated in the indictment, and that the element of possession under **Section 71(1)** of the **FPOCA** has been satisfied.
- 5.12. It is our considered view that just because the said monies or property are not physically before Court does not, in the face of

- the evidence on Record and by the Appellant's own admission, negate or nullify the fact of possession.
- 5.13. Ground One of the Appellants Grounds of Appeal therefore fails.
- 5.14. The thrust of the Appellant's argument in **Ground Two** is that the Lower Court erred in fact and in law when it arrived at the conclusion that it did not believe that the Accused Person was an agent against the evidence on Record.
- 5.15. Counsel for the Appellant's contention is that the learned Magistrate in the Court below refused to accept that the Appellant was a local representative of Curzon Global Hong Kong Limited.
- 5.16. It was submitted that in applying the principals and Law of Agency as outlined in the Heads of Arguments, **PW2** testified to the emails that implied that the Appellant was the '*local representative of [Curzon] Global*', and further that the Appellant received money as an agent and withdrew the said monies according to the instructions given to him by the Principal.
- 5.17. That **PW6** confirmed this in his testimony that in 2015, the Appellant was, for all intents and purposes, the hiring client on behalf of '*Curzon Global Limited*', a Company based in Hong Kong, to ensure collection of monies owed by Zambia Army and Zambia Air Force.
- 5.18. Further to the above, **PW6** testified that all communications between the Appellant and **PW6** were later ratified and confirmed by Curzon Global Hong Kong Limited by way of emails as stated at pages 33 to 34 of the Record of Appeal. That the Appellant was

named as one of the beneficiaries to be paid by Curzon Global Hong Kong Limited following a Judgment in Default of Defence and Appearance in the matter between the Company and the Attorney General (Cause Number 2015/HK/421) in the sum in excess of USD4,602,000.00.

5.19. Counsel for the Appellant argued that “Agency Contracts” can be entered to in writing and orally. That Curzon Global Hong Kong Limited had an agency agreement with the Appellant and that is why each time **PW6**’s Law Firm was paid by the Zambian Government, they instructed **PW6** on how much to pay to the Appellant. It was submitted that once the Zambian Government paid **PW6**’s Law Firm, Curzon Global Hong Kong Limited had every right to instruct **PW6** on who to pay, with or without explanation.

5.20. With regard to Curzon Global Zambia Limited, Counsel submitted that at that time, Curzon Global Zambia Limited had not been incorporated, so, the Appellant, when talking about being an agent he was referring to his agency agreement with the Hong Kong Company that was awarded the procurement contracts with Zambia Air Force and Zambia Army.

5.21. Counsel submitted that when the Appellant was appointed as an agent for Curzon Global Zambia Limited, this was a separate agency agreement although relating to the chasing up of payment or debt collection against the Zambian Government. That in principle therefore the Appellant was an agent for two legal

juristic persons, one based in Hong Kong, and the other based in Zambia.

5.22. In response, the Respondent maintain that the Appellant is not an agent. It was submitted that the Appellant opened his defence by stating that he was engaged as an agent by Emma Nakanyika, the Director of Curzon Global Zambia Limited, on 21st April 2016, after he had already received K980,000.00 on 20th July, 2015, and K525,954.00 on 17th November, 2015, and therefore the Appellant could not have been an agent for an entity that did not exist. They contend therefore that the above sums of money could not have been received as agent commissions.

5.23. Counsel for the Respondent argues that agency requires evidence of authority, which is typically documented in an agreement or contract; that the Appellant showed neither to prove that he was appointed an agent for Curzon Global Zambia Limited nor when he was appointed. He could not further tell the Court the scope of his agreement nor the remuneration in terms of conditions.

5.24. Counsel submitted that all he had with regard to Count 2 and 3 were letters from **PW6** to the Bank instructing them to transfer the K980,000.00 and K525,954.00 to Muchinga Procurement Limited and the Appellant's Accounts, respectively.

5.25. It was argued that these letters do not constitute evidence of an agency relationship between the Principal (Curzon Global Hong Kong Limited) and the Appellant, the same way the letter to pay Muchinga Procurement Limited K980,000.00 did not become

evidence that this Company was an agent of Curzon Global Hong Kong Limited.

5.26. Counsel argued that the Appellant's reliance on the alleged emails from Curzon Global Hong Kong Limited purportedly meant to act as ratification of the acts of the Appellant cannot hold as the said emails were never produced into Court and therefore, reliance on them as proof of anything in this Matter will fly in the teeth of the rules of production of evidence.

5.27. Counsel for the Respondent argued that the lack of evidence to this effect, coupled with the failure to delve into the scope of authority and or terms of the purported agency relationship lends credence to the conclusion by the Lower Court that the explanation given by the Appellant lacked credibility and logical coherence.

5.28. That therefore, the Lower Court's finding that there was no agency cannot be faulted on a balance of probabilities.

5.29. The Lower Court in its finding stated as follows:

“The accused does admit having received this money and possessed it, that it was in Muchinga Procurement Limited account in the sum of K980,000.00 at [I]ntermarket [B]ank and K525,954.00 was received at his account with ABSA which was paid by Katongo and [C]ompany. The only money that seems to have an explanation is K980,000.00 and K525,954.00 as these monies were

paid from Attorney General's office on admission of suit.

What is surprising is that there was no agreement showing that Accused had been appointed as the agent for Curzon Global as according to him he had been appointed by Emma Nakanyika whom he never brought to court to confirm the appointment or even for his fees to be paid to him and how. How did he get such monies? What agent duties did he do for him to get paid such monies? According to accused he was appointed agent in a year he could not remember then stated in 2014 but has no documentation to that effect. Curzon Global is a company which is in Hong Kong and surely there ought to have been an agreement even orally on how much accused was entitled to as agent fees."

5.30. It is apparent to us that whilst the Appellant maintains that he was an agent for both Curzon Global Zambia Limited and Curzon Global Hong Kong Limited, the Respondent argue that this cannot be the case as there is no proof of an agency agreement, either oral or in writing, between the two Companies and the Appellant, giving express or implied authority to act as such.

5.31. What is in contention is whether the Appellant had a valid and legal agency agreement with Curzon Global Hong Kong Limited and Curzon Global Zambia Limited to warrant the receipt of K980,000.00, and K525,954.00 from Katongo & Company, as

well as to have in his possession K4,050,000.00, allegedly received as agent fee or in his capacity as an agent from Curzon Global Hong Kong Limited as his fee from the sum awarded in the Judgment in Default, which he deposited as cash into his FNB Account; and which monies he stated in his testimony during cross examination at pages 110, 112, and 113 of the Record of Appeal as coming into his possession as an agent or as agent fees.

5.32. The Appellant clearly states at page 110 of the Record of Appeal that he did have or possess the sum K4,050,000.00, K980,000.00 and K525,954.00 as stated in Counts 1, 2, and 3, respectively, and that the said monies were used and that he was a beneficiary of the funds as an agent.

5.33. Whilst we agree with the Lower Court that there was no agreement showing that the Appellant had been appointed as an agent for Curzon Global Hong Kong Limited and Curzon Global Zambia Limited, we are not lost to the fact that an agency can be created in writing, orally and by implication and ratification through the actions of one who purports to act, being an agent, with the authority of another, being the principal.

5.34. Perusal of the Record of Appeal shows that **PW2**, Therisa Muma Mwelwa, a Banker and Branch Manager at Zambia Industrial Commercial Bank, testified to and read under cross examination an email dated 16th July, 2015 from Mr. Francis Lee Zhou, a Finance Director in Curzon Global Hong Kong Limited to the

Appellant instructing him to pay money to Muchinga Procurement Limited.

5.35. Another email was read in Court dated 8th September, 2015, from Katongo & Company addressed to the Appellant to which **PW2** testified that the Appellant was a local representative of Curzon Global Hong Kong Limited. None of the above emails were produced and entered into evidence.

5.36. A further email dated 17th November, 2015 was read out in Court to which **PW2** testified that the Appellant was receiving money as an agent and that he withdrew money according to the instructions given to him by his Principal.

5.37. Perusal of the Record of Appeal shows a letter dated 17th November, 2015, from Katongo & Company, addressed to the Bank Manager, Barclays Bank Plc, whose reference is 'Transfer of Funds', was produced and marked **PP1** whose contents state as follows:

“Reference is made to the above cited matter and kindly effect the following transfer from Katongo and Company Clients Account No. 09-4194547 to the following beneficiary: -

ACCOUNT NAME: ADOLPUS MUBANGA

BANK: BARCLAYS BANK

ACCOUNT NO.: 0431071142

AMOUNT: K525,954.00 (Five Hundred and Twenty-Five Thousand Nine Hundred and Fifty-Four Kwacha only).

These funds are on account of a debt collection involving Zambia Airforce with an instruction from the beneficiary (CURZON GLOBAL LIMITED of Hong Kong) to pay their Local Agent, Mr. Adolphus Mubanga.”

5.38.A further email from Katongo & Company was referred to and read out in Court by **PW2** dated 20th July, 2015, addressed to Kitwe Barclays Bank for the transfer of funds in the sum of K980,000.00 to the Muchinga Procurement Limited Account from Curzon Global Hong Kong Limited. **PW2** testified that these monies came from Zambia Airforce to Katongo & Company and then to Muchinga Procurement Limited.

5.39.**PP2** is a letter from Katongo & Company dated 20th July, 2015, addressed to the Branch Manager, Barclays Bank Plc referenced ‘Transfer of Funds from Katongo and Company Clients Account 09-4194547’ which states as follows:

“Kindly cause to be transferred the sum of K980,000.00 (Nine Hundred and eighty Thousand Kwacha only) from the above cited account to the following beneficiary:

MUCHINGA PROCUREMENT LIMITED

INTERMARKET BANK

LUSAKA MAIN BRANCH

ACCOUNT NUMBER: 0113113000145

SORT CODE: 150001

These funds are on account of debt collection from Zambia Air-Force.”

- 5.40. **PW2** entered into evidence **P4** being the Bank Statement for Muchinga Procurement Limited’s account held at Intermarket Bank showing a credit of K980,000.00 received on 20th July, 2015 from Katongo & Company.
- 5.41. **PW3** was Patricia Chikwanda Makukula, a Banker and Branch Manager at Absa Bank Plc who testified to the receipt of the amount of K525,954.00 into the Appellant’s personal account on 17th November, 2015, as instructed by the letter at 5.40 above. According to **PW3**’s testimony, the said monies belonged to Curzon Global Hong Kong Limited and were being paid into the Appellant’s Account as a local representative of the said Company.
- 5.42. **PW4**, an Assistant Inspector of Companies at PACRA testified to the fact that Muchinga Procurement Limited Directors are the Appellant, Elizabeth Chileshe and Alice Kasonde as evidenced by **P5b**, being the PACRA Print Out.
- 5.43. It has already been established that the Appellant is the sole signatory of Muchinga Procurement Limited’s Account held at Intermarket Bank via the mandate file.
- 5.44. **PW6**, an Advocate at the Law Firm of Katongo & Company testified to the Appellant being an agent and local representative of Curzon Global Hong Kong Limited based on the fact that he acted on behalf of his Principal to hire the Firm for purposes of debt collection and the institution of proceedings against the

Attorney General to recover monies owed to the Hong Kong based Company for the supply of goods to Zambia Army and Zambia Air Force. Consequently, a Fee and Mandate Agreement Form made between the Firm and Curzon Global Hong Kong Limited was signed by **PW6** and emailed to the Appellant who, in turn emailed it back to the Firm having been signed by a Mr. Francis Lee Zhou on behalf of the Company and witnessed by the Appellant.

5.45. **PW6**'s testimony at pages 33 to 35 was as follows:

“The gist of the agreement that we retain 2% of all monies recovered in the case of Zambia Army we commenced an action against AG and obtained a Judgment in Default of defence and appearance in the sum of \$4,602,000.00 plus (US\$ dollars).

Consequent to the same action we received K2,000,000.00 from Ministry of Justice as part payment and shortly thereafter we received an email from Curzon Global authored by Lee Zhou and copied to Mr. Adolphus Mubanga on how to disburse the K2,000,000.00.

We were advised to retain our 2% and further advised to pay Mr. Adolphus Mubanga K15,000.00 and further to pay Muchinga Procurement K25,000.00 and the remaining amount is K1,920,000.00.

We were advised to remit to Curzon Global bank account in HSBC Bank Hong Kong.

We received further instructions from Curzon Global to pay the K25,000.00 which was originally designated for Muchinga Procurement to be paid to Adolphus Mubanga.

We received a further K980,000.00 from Ministry of Justice as payment towards the indebtedness to Zambia Air Force and we received instructions to remit the money to Muchinga Procurement. We received further payments from the Ministry of Justice where \$46,218 (US\$ dollars) was paid to our Kwacha account and a concession it came to K587,000.00 plus. We received instructions from Curzon Global to remit K525,000.00 plus to Mr. Adolphus Mubanga's account and we retained our usual 2% on those monies that were recovered.

No more funds were recovered during that time until 2016 we received instructions from Curzon Global ...

In 2017, we received an email from Curzon Global reappointing ourselves as their advocates in the recovery of the balances and in the same letter we were advised that Mr. Adolphus Mubanga will continue to be the representative of Curzon Global.

No further funds were recovered on our re-appointment and we again in 2020 received communication from Curzon Global that they were

terminating the agreement and would make their own follow ups on recovery.”

5.46. In cross examination, **PW6** stated that the payments of K980,000.00 and K525,954.00 came from payments made by the Ministry of Justice to service the debt owed to Curzon Global Hong Kong Limited and by way of the letters dated 20th July, 2015 and 17th November, 2015, the said monies were paid to Muchinga Procurement Limited and the Appellant as instructed by Curzon Global Hong Kong Limited as he was their agent and local representative.

5.47. **PW8**, Kombe Joseph Mungila, an Assistant Investigations Officer at Drug Enforcement Commission under the Anti-Money Laundering Unit testified that his investigations established that Muchinga Procurement Limited, whose Bank Account had the Appellant as its sole signatory, received the amount of K980,000.00 by order of Katongo & Company on 20th July, 2015. Further that the amount of K525,000.00 was credited to the personal account of the Appellant held at Absa Bank (formally Barclays Bank Plc) on 17th November, 2015 from Katongo & Company.

5.48. After interviewing **PW6**, it was established that the above stated funds transferred to Muchinga Procurement Limited and the Appellant were payments to Curzon Global Hong Kong Limited towards the contracts that were awarded to them by the Ministry of Defence.

5.49. Whilst stating that there was no agency agreement between the Appellant and Curzon Global Hong Kong Limited, **PW8** went on to testify at pages 55 to 56 of the Record of Appeal as follows:

“I came to know about the agency when we collected the default Judgment where the accused had filed in an affidavit at the High Court that he was an agent of Curzon Global...The Accused was appointed as Agent on dates I do not know...Curzon Global is the Principal of the accused...Curzon Global appointed Katongo & Company to collect the debt on behalf of Curzon Global Hong Kong even the appointment of the accused was for the same purpose...K980,000.00 came from Katongo & Company as debt collection from ZAF the amount in count 2...This unmarked document is a letter from Katongo & Company dated 17/11/15 to Barclays Bank. The reference was transfer of funds to Adolphus Mubanga in the sum of K525,954 the amount in count 3. These were funds collected on behalf of Curzon Global by the agent Adolphus Mubanga.”

5.50. In his testimony at pages 103 to 113 in the Record of Appeal, the Appellant maintains that he is an agent of both Curzon Global Zambia Limited and Curzon Global Hong Kong Limited and his role was to help monitoring goods that were supplied to the Ministry of Defence as well as checking on payments for goods that were supplied in fulfilment of the contracts. That he received

the monies in Counts 1, 2, and 3 as an agent of Curzon Global. The Appellant testified as follows at page 107 of the Record of Appeal:

“PWS confirmed that I was an agent of Curzon Global. In count one the funds were in favour of Curzon global from the High Court Judgment so I was the agent of Curzon Global.

In count two, it was as a result of a letter of demand to Zambia Air Force I was an agent to Curzon Global hence I got these funds.

In count three, I got the funds as an agent of Curzon Global...”

5.51. In cross examination, the Appellant submits that not only did he not tell the Court when he was appointed an agent, but that he does not have a document appointing him as such and that the terms of the agreement of the agency were not in writing. The Appellant further testifies that he was appointed as an agent for Curzon Global in 2014. Further that he did deposit K4,050,000.00 into his FNB Bank Account on 26th June 2021, and that the same was received as agent fee or as an agent. At page 113 of the Record of Appeal, the Appellant states that this amount was not paid to him as agent fees, but came into his possession as an agent.

5.52. We have considered the above evidence as contained in the Record of Appeal as well as the arguments presented in the Heads

of arguments submitted by the Appellant and Respondent and the Judgment of the Lower Court.

5.53. We adopt the definition of 'Agency' by the learned author G. H. L. Fridman, in the book **The Law Of Agency** as submitted by Counsel for the Respondent at 3.20 above. According to the authors Harold Gill Reuschlein & William A. Gregory in **The Law of Agency and Partnership**, at page 2:

“The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another’s efforts, paying such other for what he does but retaining for himself any net benefit resulting from the work performed.”

5.54. Further to, William Bowstead, in the book **Bowstead On Agency**, defined an Agency as:

“The fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf, and the other of whom similarly consents so to act or so acts.”

(Emphasis ours)

5.55. In the case of **African Milling Company Limited Vs Chambala Sikazwe and Others** ⁽¹⁷⁾, at pages J16 to J17 the Court of Appeal stated that:

“It is trite that an agency relationship is created either expressly or by implication. The learned

authors of Halsbury's Laws of England, 4th Edition, state, at paragraph 19, that;

'The relation of agency is created by express or implied agreement of principal and agent ... Implied agency arises from the conduct or situation of the parties.'

5.56. It is evident from the testimonies of both the Prosecution witnesses as well as the Appellant himself as outlined above that there is clearly an agency relationship between the Appellant and Curzon Global Hong Kong Limited and Curzon Global Zambia Limited. The same may not have been expressly and formally provided by way of a written agreement, but the conduct of the parties and the manner the Appellant was presented both by Curzon Global Hong Kong Limited through its emails and letters, and Messrs. Katongo & Company through its interactions with the Appellant and the Banks, point to an agency relationship between the Appellant and the two Companies in Zambia and Hong Kong.

5.57. Having perused the Record of Appeal and testimony of the Prosecution witnesses it is our considered view that the Appellant was indeed an Agent of both Curzon Global Hong Kong and Zambia Limited and that whilst it can be assumed that he did indeed perform various duties for both Companies, it is apparent that he was engaged to facilitate the smooth payments from the contracts entered into by Curzon Global Hong Kong Limited and the Zambia Airforce and Zambia Army. The Appellant's Agency

Agreement with Curzon Global Hong Kong Limited went as far as engaging **PW6**'s Law Firm, Messrs. Katongo & Company, to pursue and sue the Government of the Republic of Zambia for the outstanding payment of USD4,602,792.58 under Cause Number 2015/HK/421.

5.58. We therefore find that the only reasonable inference that can be drawn from the conduct of the Appellant, Curzon Global Hong Kong Limited, Curzon Global Zambia Limited, and Katongo & Company, as well as the testimonies of the Prosecution witnesses, is that there was indeed an agency relationship between the Appellant and Curzon Global Hong Kong Limited.

5.59. Consequently, Ground Two of the Appeal succeeds.

5.60. With regard to **Ground Three**, the Appellant argues that it is within the rights of Curzon Global Hong Kong Limited to pay monies legitimately received from the Government of Zambia to the Appellant being its Agent, and indeed to Muchinga Procurement Limited if it so chose. It was submitted that citizens, just like juristic persons, are free to earn money legally and spend it by paying whomever they want. That the fact that the Appellant was paid as an Agent is not a crime.

5.61. In response, Counsel for the Respondent submitted that monies paid to Muchinga Procurement Limited was suspicious as the Company is a separate entity from its owners and was not an agent of Curzon Global Hong Kong Limited to warrant the receipt of K980,000.00; that the said amount should have been paid to the Appellant who had his own Bank Account. That therefore, it

was reasonable for the Lower Court to find suspicious a payment allegedly meant for the Appellant as agent fee being paid to an entity that was not an agent.

5.62. Having found as above in Grounds One and Two, and having established that the Appellant is a Director in Muchinga Procurement Limited as well as the sole signatory for the Company's Bank Account held at Intermarket Bank, we find nothing suspicious with the instruction given to Messrs. Katongo & Company by Curzon Global Hong Kong Limited to pay the K980,000.00 received as part of the debt owed for the supply of goods to Zambia Air Force from the Ministry of Justice into the Muchinga Procurement Limited Account as the Appellant's agent fees.

5.63. Consequently, Ground Three succeeds.

5.64. In **Ground Four**, the Appellant submits that the Lower Court erred in fact and law when it arrived at the conclusion that Emma Nakanyika ought to have been called as a witness when the Accused and Appellant herein had stated clearly that Emma Nakanyika was late.

5.65. The Respondent argue that the Lower Court was on firm ground when it mentioned that Emma Nakanyika should have been called before Court as a witness to attest to the Appellant's allegation that he is an agent for Curzon Global Zambia Limited. Further that nowhere in the Appellant's testimony did he mention that the said Emma Nakanyika was late.

- 5.66. We have perused the Record of Appeal and indeed have not found any testimony by the Appellant that Emma Nakanyika was late.
- 5.67. Having found that the Appellant was indeed an Agent for both Curzon Global Hong Kong Limited and Curzon Global Zambia Limited, we find no reason to delve into this Ground of Appeal as it has fallen away and has no merit.
- 5.68. Ground Four consequently succeeds.
- 5.69. Having found that the Appellant did possess the monies in Counts 1, 2, and 3 of the indictment, the evidence on Record must now show that there was reasonable suspicion that the said monies were proceeds of crime thus justifying the Lower Court's Conviction and Sentence of the Appellant under **Section 71(1)(a)** of the **FPOCA**.
- 5.70. We shall deal with **Grounds Five** and **Six** together as they are related in that both Grounds challenge the Lower Courts arrival at the conclusion that the money received by the Appellant was suspicious because he failed to explain why he was paid such huge sums, and proceeded to convict the Appellant because he failed to explain what he used the money for.
- 5.71. Grounds Five and Six of the Appellant's Grounds of Appeal state as follows:

"5. The Lower Court erred in law and fact when it arrived at a conclusion that the money received by the accused was suspicious because he did not explain why he was paid such huge sums of money as legal fees;

6. The Court erred in law and fact when it convicted the accused person on a charge of being found in possession of property suspected to be proceeds of crime because the accused failed to explain what he used the money for. (Emphasis ours)

- 5.72. Counsel for the Appellant argued Grounds Five and Six together as they relate to the findings by the trial Court in relation to Count 1 of the indictment which pertains to a cash deposit made by the Appellant of K4,050,000.00 into his FNB Account over the counter.
- 5.73. Counsel for the Appellant argues that the Lower Court erred in law and fact when it arrived at the conclusion that the money received by the Appellant was suspicious because he did not explain why he was paid such huge sums of money referred to erroneously as “Legal Fees”, and further when it convicted the Appellant of the offence under **Section 71** of the **FPOCA** because the Appellant failed to explain what he used the money for.
- 5.74. Counsel referred to the testimony of **PW1**, Jason Silwamba, a Banker at FNB, whose testimony confirmed the deposit of the said sum and how it was disbursed.
- 5.75. We shall not delve into the arguments and submissions made by Counsel on the question of whether or not the Appellant was an Agent for Curzon Global Hong Kong Limited and Curzon Global Zambia Limited as we have already made that finding.
- 5.76. Counsel submitted that the State was obliged to prove that the Appellant received, possessed, concealed, disposed of or brought

into Zambia any money or property that may reasonably be suspected to be proceeds of crime.

5.77. Counsel referred to the testimony of the Appellant at page 106 to 107 of the Record of Appeal where it was submitted that the Ministry of Defence ceased to make payments on the goods received from Curzon Global Hong Kong Limited and Katongo & Company was instructed to sue the Government; that Judgment was obtained in favour of the Company for the approximate sum of USD4,602,000.00 with interest and legal costs. Further that the Ministry of Justice was engaged on the settlement of this amount and through one such payment, the Appellant was paid K4,050,000.00 by Curzon Global Hong Kong Limited as his Agent fees.

5.78. Counsel Submitted that the testimony of **PW7** corroborated this as he testified that there was a payment made by Ministry of Finance in 2020, and that such monies coming from Ministry of Finance were not proceeds of crime.

5.79. Counsel submitted that despite this, the Lower Court still queried where the monies came from as follows:

“So where did this money K4,050,000= come from for it to raise reasonable suspicion which the accused has to explain how he was found with such a large amount of money...”

5.80. It was Counsel’s submission that the Court below fell into error when it failed to analyse the totality of the evidence before it as it was abundantly clear that the K4,050,000.00 came into the

Appellant's possession as his commission from duties performed as an Agent.

- 5.81. Counsel argued that the trial Magistrate believed **PW8**'s view that he had reasonable suspicion over this money. Counsel contended that **PW8** had a duty to investigate the issue which, it was submitted, he did not. It was submitted that **PW8** provided no evidence about his suspicion and had the power and authority to get warrants against Curzon Global Zambia Limited's Bank Accounts and inspect them. That **PW8** should have investigated the payments the Ministry of Finance was making to Curzon Global Hong Kong Limited after 2020, but that this was not done.
- 5.82. It was contended that the Appellant, being a mere Agent, had no authority to interrogate the Bank Accounts of his appointing Principals. That **PW8**'s omission to interrogate the Bank Statements of the Appellant's Principals amounted to a dereliction of duty.
- 5.83. Counsel for the Appellant submitted that the Trial Court erred in law and fact by convicting the Appellant in Count 1 as the Court had ignored cogent evidence from **PW7** as to the source of money that ended up with the Appellant, yet, believed **PW8** who merely entertained a flimsy suspicion against the Appellant.
- 5.84. Counsel urged this Court to quash the Conviction of the Appellant in Count 1 as the money he possessed was not from any illegal activity and therefore, cannot be proceeds of crime.
- 5.85. Counsel for the Respondent in response to Ground Five focused on the erroneous reference to the payments received by the

Appellant as being “Legal Fees” and contended that legal fees are costs incurred by lawyers or law firms for professional services they provide to clients plus disbursements and cannot therefore be applied to the Appellant.

5.86. In Ground Six, Counsel for the Respondent maintains that the Lower Court was on firm ground when it convicted the Appellant on the basis of the absence of a reasonable explanation as to how the money was disbursed.

5.87. Counsel contended that the monies in Count 2 and 3, being K980,000.00 and K525,954.00 respectively, were paid into the Appellant’s personal Account and the Muchinga Procurement Limited Account from **PW6**’s Law Firm, but however, the Appellant’s explanation that they arose from the suit and were Agent fees is not supported by the weight of the evidence as the Default Judgment under Cause Number 2015/HK/421 came a year after receipt of these funds.

5.88. It was argued that any individual in possession of significant sums of money with questionable origins bears the evidential burden to provide a reasonable and lawful explanation for such possession and that the Appellant failed to discharge this burden on a balance of probabilities as required by **Section 78** of the **FPOCA**.

5.89. With regards to the monies in Count 1 amounting to K4,050,000.00 deposited in cash by the Appellant into his FNB Account, Counsel for the Respondent argued that this money had no documentary trail to account for its origin. They asked the

Court to take Judicial Notice of the fact that the payment of such an amount by the Attorney General would not be in cash but through bank transfer. Further that should the Appellant have received the said monies from the Attorney General, he would have provided documentary evidence to that effect.

5.90. Counsel for the Respondent contended that the unexplained possession of such significant amount in cash, coupled with questionable transfers from the Law Firm, strongly supports the conclusion that the funds were proceeds of crime as per **Section 71** of the **FPOCA** as no reasonable explanation for its origin was provided; that the Lower Court's reliance on this legal provision and the absence of any credible defence was justified.

5.91. The Lower Court in its Judgment at page 189 questions the origin of the K4,050,000.00 as it raised reasonable suspicion which the learned Magistrate stated the Accused Person or Appellant had to explain how he was found with such a large amount of money.

5.92. We have considered the arguments presented by both Parties in Counts Five and Six.

5.93. Having found that the Appellant was an Agent for both Curzon Global Hong Kong Limited and Curzon Global Zambia Limited, and having found that the Appellant did possess the monies in Counts 1, 2, and 3 of the indictment, the question we must ask ourselves is whether the said amounts in the possession of the Appellant raises reasonable suspicion warranting a conviction and sentence under **Section 71** of the **FPOCA**. The evidence on

Record must show that there was reasonable suspicion that the said monies were proceeds of crime, thus justifying the Lower Court's Conviction and Sentence of the Appellant under **Section 71(1)(a)** of the **FPOCA**.

5.94. The Accused in this Matter was convicted and sentenced for the offence of being in possession of property reasonably suspected of being proceeds of crime pursuant to **Section 71** of the **FPOCA** as quoted at 5.6 above. The offence is a serious offence as defined by the **FPOCA** under **Section 2** which also defines 'proceeds of crime' as follows:

"proceeds of crime " in relation to a serious offence or a foreign serious offence, means property or benefit that is -

(a) wholly or partly derived or realised directly or indirectly, by any person from the commission of a serious offence or a foreign serious offence;

(b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence;

(c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence;

and includes, on a proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted, transformed or intermingled, and any income, capital or other economic gains derived or

realised from the property at any time after the offence; or

(d) any property that is derived or realised, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would, if the act or omission had occurred in Zambia, have constituted a serious offence;”

5.95. **Section 71(2)** of the **FPOCA** provides a defence and states as follows:

“(2) It is a defence under this section, if a person satisfies the court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from any unlawful activity.” (Emphasis ours)

5.96. From the above, once a person is charged under **Section 71** of the **FPOCA** for the offence of being in possession of property reasonably suspected to be proceeds of crime, **Section 71(2)** provides the defence. In *casu*, the Appellant having been so charged, and found with a Case to Answer, must defend himself by providing credible evidence to satisfy the Court that there were no reasonable grounds for suspecting that the monies were derived or realised directly or indirectly from any unlawful activity.

5.97. We are buttressed by the finding in the case of **The Director of Public Prosecutions Vs Sharon Lee Brown** ⁽¹⁸⁾, wherein Olsson J. stated as follows:

“Once it is shown that there has been a relevant receiving, possession, concealment or disposal of property that may reasonably be suspected of being proceeds of crime, then an offence has, prima facie, been committed.”

5.98. The Record of Appeal shows that the Appellant, when questioned under Warn and Caution opted to remain silent. This is within his rights. However once charged and brought before Court, it is in the Appellant’s best interest, when found with a Case to Answer and in accordance with **Section 71(2)** of the **FPOCA**, to defend himself by providing credible evidence of how he lawfully came to be in the possession of the amounts in the indictment.

5.99. In the case of **The People Vs Austin Chisangu Liato** ⁽⁷⁾, it was stated as follows:

“Our understanding of section 71 (2) is that it does not impose any duty on the accused person to prove any ingredient of the offence under section 71 (1). Where the prosecution proves its case against the accused under section 71 (1), it behoves such accused person, if desirous of defending himself, to show that he had no reasonable grounds for suspecting that the property to which the charge under section 71 (1)

related, was derived from criminal activity. While we agree with the High Court that section 71(2) does not impose any obligation on the accused person to prove any ingredient of the offence under section 71 (1), it does afford the accused an opportunity to explain the absence of reasonable grounds on his part, for suspecting that the property he was found in possession of under section 71(1) was proceeds of crime.”

5.100. The standard of proof is provided for in **Section 78** of the **FPOCA** as follows:

“Save as otherwise provided in this Act, any question of fact to be decided by the court in proceedings under this Act is to be decided on the balance of probabilities.”

5.101. Therefore, the Appellant must use the opportunity afforded to him under **Section 71(2)** of the **FPOCA** and proffer evidence to the satisfaction of the Court and on a balance of probabilities, that the monies in his possession could not be reasonably suspected to be proceeds of crime.

5.102. The evidence on Record points to the fact that the Appellant’s Principal, Curzon Global Hong Kong Limited, had procurement contracts with the Ministry of Defence to supply goods to the Zambia Army and the Zambia Airforce.

5.103. **PW6** in his testimony from page 32 of the Record of Appeal states that the Appellant engaged his Law Firm, Messrs.

Katongo & Company, on behalf of Curzon Global Hong Kong Limited, for the services of debt collection and recovery of monies from the Zambia Army and Zambia Airforce who owed it various amounts of money for the procurement of various goods. **PW6** testified that he was availed, upon request, with the various contracts entered into by Curzon Global Hong Kong Limited and the Zambia Army and Zambia Airforce.

- 5.104. **PW6** testified that the Law Firm commenced an action in 2015 against the Attorney General and obtained a Judgement in Default of Defence and Appearance in 2017 (**PP3** at page 261 of the Record of Appeal) in the sum of USD4,602,792.58 and that the Law Firm received payments towards the liquidation of the same.
- 5.105. **PW6** testified that the Law Firm did receive a payment of K980,000.00 from the Ministry of Justice for the monies owed by Zambia Airforce and received instructions from Curzon Global Hong Kong Limited to pay Muchinga Procurement Limited the said amount on 20th July, 2015, as evidenced by a letter from the Law Firm instructing its Bank, Barclays Bank Plc, to pay the said amount into Muchinga Procurement Limited's Account held at Intermarket Bank marked **P2**, and the Bank Statement from Intermarket Bank marked **P4** showing the credit into the Account.
- 5.106. That the Law Firm received further payment from Ministry of Justice amounting to USD46,218.00 into its Kwacha Account and received instructions from Curzon Global Hong Kong

Limited to pay the Appellant K525,954.00 into his account in November, 2015. This is evidenced by a letter from Katongo & Company to its Bank, Barclays Bank Plc, dated 17th November, 2015, instructing it to pay the said sum into the Appellants Account held at Barclays Bank Plc marked **PP1**.

5.107. **PW6** testified that no further funds were recovered and in 2020, Curzon Global Hong Kong Limited terminated their agreement with the view that they would make their own follow-ups on the recovery of monies outstanding.

5.108. **PW7**, Mr. Kafunti Chilambi, who at the time worked for the Ministry of Finance, testified that in September, 2019, he received a letter from the then Attorney General, Mr. Likando Kalaluka SC, stating that there was an admitted debt under the Compensation Awards in favour of Curzon Global Limited and that the Treasury should liquidate the admitted debt which was Dollar denominated. That following receipt of an authority to remit all payments into the Kwacha Account of Curzon Global held at Atlas Mara Bank penned by the then Permanent Secretary at the Ministry of Justice, Mr. Nkunika, it was agreed that due to limited funds, the debt would be liquidated in a phased manner and the first payment was then made between 2020 and 2021.

5.109. **PW8**, Mr. Kombe Joseph Mungila, an Assistant Investigations Officer under the Anti-Money Laundering Unit at the Drug Enforcement Commission, testified that they received information to the effect that Mr. Geoffrey Bwalya Mwamba,

the then Minister of Defence, was alleged to have abused his authority of office by facilitating the award of contracts worth USD4,600,000.00 to a company called Curzon Global Limited in Hong Kong by the Ministry of Defence and Zambia Airforce. That the contracts were for the supply of assorted items to Zambia Airforce (ZAF) and Zambia Army (ZA). That upon receipt of this information, investigations were instituted.

- 5.110. He testified that his investigations revealed and confirmed that the payments of K980,000.00 paid into the Account belonging to Muchinga Procurement Limited on 20th July, 2015, and K525,954.00 paid into the Appellant's Account on 17th November, 2015, were from Messrs. Katongo & Company, and were from payments made to Curzon Global Limited through the Law Firm for the contracts that Curzon Global Limited was awarded by the Ministry of Defence.
- 5.111. His investigations further revealed that the amount of K4,050,000.00 was deposited in cash over the counter by the Appellant into his FNB Kwacha Account on 26th June, 2021. That the deposit was made during the period when Curzon Global Limited received a total of K104,000,000.00 from Ministry of Finance, being between 2020 and 2021.
- 5.112. **PW8** testified that the Appellant was called to the Ministry of Home Affairs in February, 2022, to be interviewed and he opted to remain silent, following which a Warn and Caution Statement was produced on a charge of being in possession of property suspected to be proceeds of crime contrary to

Section 71 of the **FPOCA** and the Appellant was charged and arrested accordingly.

5.113. We have perused the Judgment of the Lower Court and found that the learned Magistrate found the following as fact:

“I find as a fact that accused has deposited K4,050,000 cash in his bank account held at First National Bank on 26th June, 2021...I find as a fact that Muchinga Procurement account held at Intermarket Bank had received K980,000.00 on 20th July, 2015. I find as a fact that the accused’s account had received K525,954.00 held at ABSA Bank Zambia PLC on 17th November, 2015. I find as a fact that Curzon Global had sued the State through the Attorney General, that is Ministry of Defence, who had signed a contract for supply of uniforms to Zambia Army and Zambia Airforce.

I find as a fact that Katongo and Company had sued the State on behalf of Curzon Global and was paid K980,000.00 and K525,954.00 which monies were deposited in Muchinga Procurement Limited and to Adolphus Mubanga respectively. I find as a fact that it was accused who had approached Katongo and Company to sue the State on behalf of Curzon Global. I find as a fact that Katongo and Company was instructed by Curzon Global to pay the monies received to the accused as instructed and to

Muchinga Procurement Limited. I find as a fact that accused does not deny receiving all these monies and possessing it.”

5.114. The Lower Court went on to state that the only money that seems to have an explanation is the K980,000.00 and K525,954.00 as these monies were paid from the Attorney General's Office on admission of the debt.

5.115. We do agree with the Lower Court's findings of fact above, as perusal of the evidence on Record shows that the K980,000.00 and K525,954.00 were paid to Messrs. Katongo & Company who then transferred the amounts to Muchinga Procurement Limited and the Appellant's Accounts in July and November, 2015, respectively, prior to the Judgment in Default dated March, 2017, based on a suit filed in 2015.

5.116. It is our considered view and based on the evidence on Record, that the Appellant, being an Agent for Curzon Global Hong Kong Limited, his Principal, was paid these amounts by Messrs. Katongo & Company as instructed. The amounts of K980,000.00 and K525,954.00 originate from the debt owed to Curzon Global Hong Kong Limited for the supply of various goods to the Zambia Army and Zambia Airforce. The Prosecutions witnesses have provided the origins of the said monies clearly and there is a trail from Messrs. Katongo and Company also confirming this.

5.117. The Amount of K4,050,000.00 however, and as well noted by the learned Magistrate, is suspect.

- 5.118. From the evidence on Record, this amount was deposited in cash and over the counter by the Appellant into his FNB Account on 26th June, 2021. **P2**, being a Bank Statement for the said Account, shows that the narration is “Maize, Soya and Beans”.
- 5.119. Counsel for the Appellant argues that this amount stems from the debt owed to Curzon Global Hong Kong Limited and was paid by the Government in an effort to liquidate its Judgement Debt in the sum of USD4,602,792.58 as shown by exhibit marked **PP3**, being the Judgment in Default in Cause Number 2015/HK/421.
- 5.120. There is the testimony of **PW7**. However, this merely confirms that a payment was made to Curzon Global Hong Kong Limited between 2020 and 2021 towards liquidating the Judgment Debt. It was **PW8** who submitted that the amount paid was K104,000,000.00. Unlike the payments received by Messrs. Katongo & Company of K980,000.00 and K525,954.00 and paid into the Bank Account of Muchinga Procurement Limited and the Appellant’s Account, the sum of K4,050,000.00 paid over the counter by the Appellant into his FNB Account has no origin.
- 5.121. Perusal of the Record shows that the Appellant testified to the sum being paid to him as agent fees, however, and as rightly noted by Counsel for the Respondent, should the Government have paid these monies to liquidate the Judgment Debt, the same would not have been paid in cash to either the Appellant

or Curzon Global Hong Kong Limited. It would have been paid by way of bank transfer as stated by **PW7** in his testimony that authority was granted to remit all payments into the Kwacha Account of Curzon Global held at Atlas Mara Bank penned by the then Permanent Secretary at the Ministry of Justice, Mr. Nkunika.

5.122. Therefore, the question remains where did the K4,050,000.00 cash in the possession of the Appellant come from?

5.123. We agree with Counsel for the Respondent's assertion that any individual in possession of significant sums of money with questionable origins bears the evidential burden to provide, on a balance of probabilities, a reasonable and lawful explanation for such possession to the satisfaction of the Court when charged with an offence under **Section 71** of the **FPOCA**.

5.124. It is our considered view that with regard to the K4,050,000.00, in Count 1, the Appellant failed, on a balance of probabilities, to provide a reasonable and lawful explanation for such possession. Unlike the amounts in Counts 2 and 3, there is no paper trail, documentation or other concrete evidence to show that this amount emanated from a payment made by the Government, through the Ministry of Finance to Curzon Global Hong Kong Limited's Account held at Atlas Mara Bank. The Appellant did not provide evidence showing that the said money he had in cash came from Curzon Global Hong Kong Limited; he did not

provide the Court with evidence of withdraw from the Company's Account or any other supporting documents.

5.125. We note that PW7 merely stated that K104,000,000.00 from Ministry of Finance, was paid between 2020 and 2021, and it was during this period that the Appellant made the cash deposit of K4,050,000.00. However, there was no evidence adduce to show any specifics, such as how much and when any amount was paid or whether the Appellant was paid a lump sum or in instalments. We therefore find that the blanket information on the payment from **PW7** does not help the Appellant's case.

5.126. Furthermore, the deposit narration does not in any way show that the K4,050,000.00, was agent fees and provides a totally unrelated narration of 'maize, soya and beans'. If indeed these were agent fees, why did the Appellant give such a narration? This in itself raises suspicion as to the source of the money. The feeble explanation from the Appellant's Counsel that the money was meant to purchase these items does not hold water and if anything, this is evidence from the Bar and inadmissible.

5.127. Messrs. Katongo & Company were no longer retained by Curzon Global Hong Kong Limited post 2020 and therefore were no longer in receipt of payments into their Client Account held at Barclays Bank Plc, now ABSA Bank Plc, for onward transmission and therefore, could not verify the source of the said monies.

- 5.128. It is consequently our considered view that the Appellant has failed to give a reasonable explanation for possessing the monies in Count 1, being K4,050,000.00, leaving us with the only logical inference that this sum was derived from unlawful activities and therefore is reasonably suspected to be proceeds of crime.
- 5.129. We have noted that Counsel for the Respondent submitted on the case of **The People Vs Geoffrey Bwalya Mwamba** ⁽¹⁰⁾, a matter that was determined in the Subordinate Court, and the finding of the learned Magistrate therein. It is our considered view that the Judgment of the Lower Court in that matter as alluded to by Counsel for the Respondent herein, does not raise issues falling for determination in *casu*. We shall therefore, disregard the same.

6. CONCLUSION

- 6.1. Based on our findings above and on the evidence in the Record of Appeal, we find that Grounds Five and Six fail only in relation to Count 2 and 3, as it is our considered view that there is a reasonable explanation proffered by the Appellant regarding the amounts in the said Counts.
- 6.2. However, we find that Grounds Five and Six succeed in relation to Count 1 and the amount therein as the Appellant has failed, on a balance of probability, to proffer evidence that the sum was lawfully obtained and not proceeds of a crime.
- 6.3. We reverse the findings of the Court below and forthwith acquit the Appellant on the charges in Counts 2 and 3.

6.4. We uphold the finding and Sentence of the Appellant to two (2) years Imprisonment with Hard Labour as determined by the Court below.

6.5. Leave to Appeal is granted.

**DELIVERED AT LUSAKA THIS 5TH DAY OF NOVEMBER,
2025**



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



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



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