

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

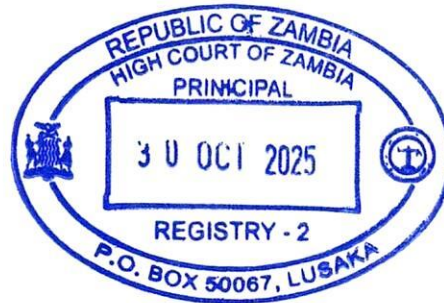
2023/HP/1409

BETWEEN:

LUNDA MANKULUBINDA

AND

MOSES MAFWENKO



PLAINTIFF

DEFENDANT

Before Hon. Mr. Justice M.D. Bowa on 30th of October, 2025.

For the Plaintiff: In person

For the Defendant: Mrs. N. Sinkala Shilishebo of Messrs. Willis Clement & Partners

RULING

Cases referred:

1. *Muyuni Estates Limited vs. MPH Chartered Accountants (Sued as a Firm)*
(2013) Vol 2 ZR 120
2. *Chazya Silwamba vs. Lamba Simpito* (2010) Vol.1 ZR 475
3. *Finance Bank Zambia PLC v Lamasat International Limited CAZ Appeal*
No. 175 of 2017
4. *Salomon vs. Salomon & Co. Limited* (1897) AC 22
5. *Zega Limited v Zambezi Airline & Another Appeal No. 39 of 2014)*
6. *Elly v Ellis* 235 A.D.2d 1002
7. *Ash vs. Hutchinson (Publishers)* (1936) ch. 489
8. *Hotlier Limited and Ody's Works Limited vs. Finsbury Investments Limited*
(2012) Vol2 220 ZR
9. *Simbeye Enterprises Limited and Another vs. Yousuf (SCZ) Judgment No.13*
of 2000
10. *Attorney General vs. Aboubacar Tall & Another (S.C.Z. Appeal 77 of 1994)*



Legislation referred to

1. *High Court Rules Cap 27 of the Laws of Zambia Order 21 r 6*

Other Authorities referred to:

1. *RSC of England 1999 edition*

2. *Halsbury's Laws of England Vol 37 Fourth Edition*

1. Introduction:

1.1 This is a combined ruling for an application for an order to enter Judgment on admission and for an order for Joinder of a party. I will first consider the application for an order for entry of Judgment on admission. The Plaintiff commenced this action by Writ of Summons and Statement of Claim dated 17th August 2023 seeking the following reliefs:

- i. *Payment of a total sum of ZMW 120, 000.00 being ZMW 70, 000.00 investment fund made by the Plaintiff to the Defendant and ZMW 50, 000.00 expected profit from the business venture.*
- ii. *Simple interest from the date of default to the date of the Writ.*
- iii. *Interest on the above sum.*

- iv. Costs of and incidental to these proceedings; and*
- v. Any other reliefs the Court deems just and equitable in the circumstances.*

2. Affidavit evidence

2.1 On 13th of October 2023, the Plaintiff filed into court an application for an order to enter judgment on admission. The affidavit in support of the application was sworn by Lunda Mankulubinda the Plaintiff in this matter. She averred that sometime in March 2023, the Plaintiff entered into an oral agreement with the Defendant relating to a business venture wherein it was agreed that the Plaintiff would invest a total sum of ZMW 70, 000.00. That the return for her investment was a profit of ZMW 50, 000.00 within 45 days thus making a total sum of ZMW120, 000.00 owed to the Plaintiff by the Defendant.

2.2 She averred that she proceeded to disburse a total sum of ZMW 70, 000.00 to the Defendant which was to be repaid plus interest within 45 days from the date of receipt. She averred further that she gave the Defendant sum of \$1,000 in cash which was at the time equivalent to ZMW 20, 000.00 on the 2nd of March 2023. A further ZMW 50, 000.00 was sent via

electronic money transfer to the Defendant's personal account on the 2nd of March 2023. A copy of the transaction transcript was exhibited as **"LM1"**.

2.3 She deposed that once the sum of ZMW 70, 000.00 was disbursed by the Plaintiff, her obligations towards the oral agreement were fully performed. In this regard, the Defendant acknowledged via WhatsApp messages thanking the Plaintiff for the payment of the money. A printout of the WhatsApp message was exhibited as **"LM2"**.

2.4 She deposed further that after entering into the said oral agreement and having received the agreed investment amount, the Defendant has failed to pay back the money with the interest despite several reminders. That the Defendant did through a WhatsApp message admit owing the money to the Plaintiff as he was responding to a demand letter that was written to him by the Plaintiff's advocates. A copy of the demand letter was exhibited as **"LM3"**.

2.5 That the Plaintiff commenced this action by way of Writ of Summons and Statement of Claim and that the Defendant did

file his Defence on the 8th of September 2023 which does not traverse the Statement of Claim but only contains bare denials. Further that in paragraphs 6 and 8 of the said Defence, the Defendant admits owing the sum of ZMW120, 000.00. Further that the said paragraphs are evasive statements of non-admissions and neither do they traverse the allegations in the Statement of Claim with regards the Defendant's indebtedness and promises to settle the debt. That it is in this regard that this Court should enter Judgment on admission against the Defendant for the sum of ZMW 120, 000.00 plus interest and costs.

2.5 The Defendant filed into Court an affidavit in opposition on the 22nd of March 2024, deposed to by Moses Mafwenko the Defendant himself. He averred that the Plaintiff made an application for entry of Judgment on admission despite the fact that he filed a defence which discloses triable issues that are highly contested. Further that he disclosed in his defence that the Plaintiff dealt with a company in which he was merely a Director and Shareholder.

2.6 It was his position that the Plaintiff did enter into an oral/ verbal agreement with a company called Auctus Investments Limited and that he was merely a representative of the said company. Further that the agreement was for the Plaintiff to invest the sum of K 70, 000.00 towards a viable business opportunity that had arisen. He deposed further that on the 7th of March, 2025, an email was sent to the Plaintiff whose subject was "Business Development-Auctus Investments Limited" which outlined the company's opportunity to supply protective clothing to the Zambia Police Service. A copy of the email was exhibited as "**MM1**".

2.7 He averred that contrary to what has been stated in the Plaintiff's application, the payment of the K120, 000.00 to the Plaintiff was to be done upon the Zambia Police Service paying the money invoiced for the supply of the Antistatic Winter Jackets. He further averred that it was true that the Plaintiff invested the sum of K 70, 000.00 into the business.

2.8 It was his position that the business venture did materialize and the Static Winter Jackets were purchased and delivered to the Zambia Police Service to which invoices were issued by Auctus

Investments Limited on the 3rd of March, 12th April 2023 and 21st April 2023. Copies of the invoices were exhibited as “**MM2**”. That the said invoices were availed to the Plaintiff in the spirit of transparency.

2.10 He deposed further that the Zambia Police has to date not paid for the issued invoices, a fact which the Plaintiff is aware of as she made efforts to inquire from the Police on the payment. A copy of a letter from the Zambia Police Service showing that payment has not yet been made was exhibited as “**MM3**”. He averred that the Plaintiff has always been aware as per agreement that the receipt of the K120, 000.00 was entirely dependent on the pending payment from the Zambia Police Service.

2.11 It was his position that he did not admit owing the Plaintiff the money in his personal capacity but acknowledged receipt of the Plaintiff’s demand letter as a representative of the company. a copy of the WhatsApp message exchanged between the Defendant and the Plaintiff was exhibited as “**MM4**”. He deposed that he believed based on the advice of his advocates

that the claim of K 120, 000.00 was wrongly directed to him as he is merely a Director in Auctus Investments Limited.

2.12 Further that he believed based on the advice from his advocates that the Plaintiff being aware of the pending payment, that the claim is premature on the basis that the payment of the K 120, 000.00 was conditional on the liquidation by the Zambia Police Service of the invoiced amount of K247, 500.00, from which her payment was to emanate. He further deposed that the non-disclosure of material facts is in bad faith to an application such as this one and that this is not a proper case to enter judgment on admission.

2.13 The Plaintiff filed into Court an affidavit in reply on the 9th of April 2024, deposed to by Plaintiff herself. She deposed that contrary to the Defendant's assertion that the business proposal was made by him as a director of a company named Auctus Investments Limited, it was her position that this was never mentioned to her at the time of the transaction. Further that the Defendant has failed to specifically traverse the contents of the Statement of Claim but merely offered denials.

A copy of a WhatsApp Message in support of her averment was exhibited as “**LM1**”.

2.14 She deposed further that she never entered into any oral agreement with the company as the transaction was a business venture between the Defendant and herself as can be seen through the communication between her and the Defendant in which he was using the word “I”. A copy of a WhatsApp message in this regard was exhibited as “**LM2**”.

3.0 Skeleton arguments

3.1 The application was supported by skeleton arguments and list of authorities dated 13th October 2023. Reference was made to Order 27 rule 3 of the RSC and Order 21 rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia making provision for applications for judgment on admission and the power of the Court to grant such an order.

3.2 Further reliance was placed on the case of **Muyuni Estates Limited vs. MPH Chartered Accountants (Sued as a Firm)**¹ in which the court held that:

“1. The word admission is not defined in the High Court Rules. It is clear however, that the word is not technical and bears the ordinary meaning in the English language.

2. The word admission means acknowledgment, acceptance, concession, disclosure or divulgence.

3. Order XXI rule 6, applies whenever there is clear admission of facts in the face of which it is impossible for the party making it to succeed.”

3.3 Further reference was made to paragraph 314 of **Halsbury’s Laws of England Vol 37 Fourth Edition** which it was argued, is couched in similar terms as Order XXI rule 6 of the High Court Rules. It was submitted that an application for judgment on admission is appropriate where there are bare denials to the allegation of fact made in the Statement of Claim or Counterclaim and in instances where the defence is a general or bare denial of allegations of facts.

3.4 It was submitted that the Defendant’s defence fails as the money was paid to the Defendant by way of cash and an electronic transfer to his personal account and not the company. It was further submitted that this shows that the

Defendant is personally liable and that he is only being evasive by trying to use the company to invade his indebtedness.

3.5 Reliance was further placed on the case of **Chazya Silwamba vs. Lamba Simpito**² in which the Court held that:

“ A party may admit the truth of whole or any part of another party’s case. when a fact is admitted, it is unnecessary for a party to advance in relation to the admitted fact (s) at trial... when a fact is admitted, it ceases to be an issue and neither is required or permitted to advance evidence about it at trial...”

3.6 It was submitted that this case is within the Court’s power and authority to grant the Plaintiff’s application .

3.7 The Defendant filed into Court Skeleton Arguments in opposition on the 22nd of March 2024. It was submitted that the Plaintiff ought to meet the legal requisites set for a Judgment on admission. That there ought to be unconditional, unequivocal and clear admissions by the Defendant. It was submitted that in this case the affidavit is clear and on the communications relied on in the affidavit thereto, the Judgment on admission should not be granted. Reliance was placed on order XX1 rule 6 of the High Court Rules and the case of

Finance Bank Zambia PLC v Lamasat International Limited³

in which the Court of Appeal stated that:

“It is trite that the Court has discretionary power to enter judgment on admission under Order 27 of the Rules of the Supreme Court of England. This power is exercised in only plain cases where admission is clear and unequivocal. An admission has to be plain and obvious on the face of it, without requiring a magnifying glass to ascertain its meaning. Admissions may be in pleadings or otherwise, and must be clear and unequivocal.”

3.8 It was submitted that the Defendant has filed a defence which is his pleadings, even before the Plaintiff made this application. It was submitted that in light of the authorities cited, this Court should bear in mind when exercising its discretion that a Judgment on Admission is a judgment without trial essentially denying the Defendant his right to be heard. That the discretion should only be exercised when there is a clear and unequivocal admission.

3.9 It was submitted that the Plaintiff is relying on a demand letter that was sent to the Defendant through a WhatsApp message which the Defendant only acknowledged receipt of and

promised to respond to accordingly as the basis for the prayer for the Court to enter Judgment. This according to the Defendant, is not tenable. It was further submitted that the Plaintiff is equally relying on the fact that the Defendant in his Defence did point out that the business venture did materialize.

3.10 It was submitted that this Court ought to appreciate that the Plaintiff in her originating process withheld material facts of how the claim arose. Notably, the fact that claim is directed to the Defendant when the Plaintiff dealt with him in his capacity as director of Auctus Investments Limited. Reference was made to section 22(a) of the Companies Act No. 10 of 2017 and the case of **Salomon vs. Salomon & Co. Limited**⁴ on the Corporate nature of a Company.

4. Hearing

4.1 At the hearing, the Plaintiff relied on the documents filed in support of the application. Counsel for the Defendant Mrs. Shilishebo equally relied on the documents filed in opposition.

5. Court's consideration:

5.1 I have carefully considered the evidence and filed submissions. No debate arises on the court's power to enter a judgment on admission. The requirements for entry of judgment on admission are found in Order 21 rule 6 of the High Court Rules and Order 27 rule 3 of the RSC. Order 21 Rule 6 of the High Court Rules provides that:

“A party may apply on motion or summons, for a judgment on admission where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise”

5.1 Order 27 rule 3 of the Rules of the Supreme Court provides that:

“27 (3) Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment, or make such order, on the application as it thinks just.”

5.2 The Supreme Court in the case of **Zega Limited v Zambezi Airline & Another**⁵ summed up the requirements in the following terms.

“It is true that under order 21 r 6 of the High Court Rules and Order 27 r3 of the RSC the court is empowered to enter judgment in favour of a party based on the admissions of fact made by the other party on its claim(s). However, we must also hasten to mention that the position of the law as spelt out under Order 27/3/2 of the RSC is that admissions of liability by the party against whom judgment on admission is sought to be entered may be express or implied and that the admission must be clear. This position was echoed in the case of Himani Alloy Ltd V Tata Stech Limited in which the Supreme Court of India made it clear inter alia that the admission must be a conscious and deliberate act of the party making it and showing an intention to be bound by it. And that unless the admission is clear, unambiguous the discretion of the court should not be exercised to deny the valuable right of a Defendant to contest the claim against him.”

5.6 In **Ellis v Ellis**⁶ the court aptly described the intent of the rule on entry of judgment on admission in the following terms:

“The object of the rule was to enable a party obtain a speedy judgment where the other party has made a plain admission entitling the former to succeed. It applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.”

5.7 It is safe to conclude that to be successful in an application, the admission relied upon must be clear and unequivocal. The court must always guard against rushing into entry of judgment on admission unless this threshold is met and as was stated by the Supreme Court in the Zega Limited v Zambezi Airline & Another case (supra) quoting the holding in Himani Alloy Ltd, “The discretion of the court should not be exercised to deny the valuable right of a Defendant to contest the claim against him.”

5.9 A perusal of the defence filed in by the Defendant reveals a different state of affairs from the one presented by the Plaintiff. The Defendant avers that he did not personally enter into an oral agreement with the Plaintiff but that he was merely acting as a representative of the Company in which he is a director. He avers further that it was the company that entered into an agreement with the Plaintiff and not him hence he should not be held personally liable.

5.10 Exhibit “**MM1**” is an email outlining the details of the business venture. In the email it is clear to note that the communication that was being made to the Plaintiff indicated that the business

venture was to be done by Auctus Investments Limited for the supply of winter jackets to Zambia Police. Further the email shows that it was sent by the Defendant as Director of the Company and not in his personal capacity. Further exhibits “**MM2** and **MM3**” show that the supply of the Winter Jackets that the subject of the business venture, was done by Auctus Investments Limited and not the Defendant in his personal capacity.

5.12 The Defendant cannot thus be held personally liable for acts of a company in which he is a director in the circumstances of this case. Exhibit “**MM4**” cannot be deemed as an unequivocal admission on the part of the Defendant as he is merely stating that he will respond to the demand letter accordingly.

5.13 In the case of **Ash vs. Hutchinson**⁷ Greene LJ referred to order 27 rule 3 of the RSC and stated that:

“A plaintiff who relies for the proof of a substantial part of his case upon admissions in the defence, must in my judgment, show that the matters in question are clearly pleaded and as such clearly admitted; he is not entitled to ask the court to read meanings into

his pleadings which upon a fair construction do not clearly appear in order to fix the Defendant with an admission”.

5.14 From the case above, a Plaintiff is obligated to show that there is a clear admission of the claim by the Defendant. A perusal of the Defence does not show a clear admission by the Defendant of the Plaintiff's claim. What comes out from the Defence is the fact that the Defendant states that he was merely acting as a director in a company that entered into a business venture with the Plaintiff.

5.15. It is from the forgoing that I find that this is not a proper case in which I can grant an order to enter judgment on admission against the Defendant and as such I dismiss the application.

5.16 Moving on to the application for joinder, the Defendant filed into Court an affidavit in support of application for Joinder on the 22nd of March 2024 deposed to by Moses Mafwenko the Defendant and director in the intended Defendant company. A copy of a print out from PACRA was exhibited as **“MM1”**.

5.17 He deposed that sometime in the year 2023, the Intended Defendant as a company had a business opportunity to supply

goods to the Zambia Police Service. That he represented Auctus Investments Limited in a business transaction wherein it was agreed that the Plaintiff would invest K70,000.00 towards the purchase and delivery of Antistatic Winter Jackets to the Zambia Police Service jointly with the company and that the Plaintiff was to make a profit of K50, 000.00 on her capital injection.

5.18 He deposed that the representations he made to the Plaintiff at the time of engagement were on behalf of the company and not in his personal capacity. Copies of communication between him and the Plaintiff were exhibited as **“MM2”**. He averred further that while the company was awaiting payment of the goods supplied, the Plaintiff commenced an action for the recovery of the said investment sum and profit arising therefrom and directed the suit to him in his personal capacity when the appropriate party to the agreement is Auctus Investments Limited. Copies of invoices showing that the company is the one that supplied the goods were exhibited as **“MM3”**.

5.19 He deposed that he believed based on the advice of his advocates that it is now necessary for Auctus Investments Limited to be joined to these proceedings to answer to the claims raised by the Plaintiff in this action.

5.20 The Plaintiff filed into Court an affidavit in opposition dated 22nd of March, 2024 deposed to by the Plaintiff. It was her position that she dealt with the Defendant and not the company contrary to the Defendant's assertion. Further that at no point during the transaction did the Defendant ever bring to her attention that she was dealing with Auctus Investments Limited.

5.21 She further averred that the fact of her dealing with the Defendant and not the company is evidenced from the money that was paid into the Defendant's personal account. A copy of the deposit slip was exhibited as **"LM1"**. She further deposed that upon failure of the transaction, the Defendant offered to personally refund her. A copy of the WhatsApp message with an undertaking by the Defendant for the refund was exhibited as **"LM2"**.

5.22 She further averred that the email that was sent to her on the 7th of March 2023 was sent after she had already transacted with the Defendant on the 2nd of March 2023. That the purpose of that email was the Defendant requesting the Plaintiff to mobilize capital for his various business opportunities amounting to a sum of USD 26822.88 (540, 000).

6. Skeleton arguments

6.1. The Defendant filed into Court skeleton arguments on the 22nd of March, 2024. Reference was made to order 14 rule 5(1) of the High Court Rules on the Court's power to join a party to proceedings. Further reference was made to the case of **Hotlier Limited and Ody's Works Limited vs. Finsbury Investments Limited**⁸ where the Court's finding was that order 14 rule 5 of the High Court Rules should be read together with order 15 rule 6(4) of the RSC on the Court's power to add a party who was left out of proceedings at any stage.

6.2 It was submitted that the Defendant has demonstrated through his affidavit evidence as well as the filed defence the basis on which the Company ought to be added as a party to these

proceedings. Further reliance was made to section 22 of the Companies Act No. 10 of 2017 on a company's corporate nature, which is that it is capable of suing and being sued in its own name.

6.3 The Plaintiff filed into Court skeleton arguments in opposition on the 22nd of April, 2024. Reliance was placed on order 14 rule 5(1) of the High Court Rules and Order 15 rule 6 of the RSC on the Court's power to order joinder of a party. It was submitted that only a person with some interest, claim or who is likely to be affected by the outcome of the proceedings should be joined as a party.

6.4 It was submitted that the Plaintiff has in her affidavit in opposition demonstrated that she never dealt with the company hence there being no basis for adding it as a party.

7. Hearing

7.1 At the hearing, Counsel for the Defendant Mrs. Shilishebo relied on the documents filed in support of the application. The Plaintiff equally relied on the documents filed in opposition.

8. Court's Consideration

8.1 I have carefully considered the application before me. The rules applicable in the present application are **order 14 Rule 5(1) of the High Court Act**, provides that:

“if it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:..”

8.2 Further **Order 15 rule 6 (b) of the RSC** provides that:

“Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application –

(b) order any of the following persons to be added as a party, namely-

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.”

8.3 The above provisions undoubtedly clothes the court with the jurisdiction to join a party who has sufficient interest in the matter or maybe affected by the outcome of the proceedings.

8.4 The Supreme Court in the case ***Simbeye Enterprises Limited and Another vs. Yousuf***⁹, held that:

“it has been the practice of the Supreme Court to join any person to the appeal if the decision of the Court would affect that person or his interest. The Purpose of the rule is to bring all parties to disputes relating to one subject-matter before the Court at the same time so that disputes maybe determined without the delay, inconvenience and expense of separate actions and trials.” (emphasis added)

8.5 Further the Supreme Court in the case of **The Attorney General vs. Aboubacar Tall and Zambia Airways Corporation Ltd**¹⁰, the Supreme Court observed that:

“...the joining of the Attorney General in these proceedings would be necessary to ensure that the matters in the cause may be effectually and completely determined and adjudicated upon to put an end to any further litigation”

8.6 It is in the interest of justice that all parties to a dispute relating to one subject matter be before court at the same time. It is clear from the Defendant’s evidence that he seeks to bring all the parties to the dispute before court to avoid multiplicity of actions which is as it should be. The Supreme Court succinctly explains this rationale in the case of **B.P Zambia Plc vs. Interland Motors Limited**¹¹ in the following terms:

“terms of section 13 of the High Court Act, as well as in conformity with the Court’s inherent power to prevent abuse of its processes, a party in dispute with another over a particular subject should not be allowed to deploy his grievances piecemeal in scattered litigation and keep on hauling the opponent over the same matter before various Courts. The concern of the Court in parties re-litigating matters, is that the administration of justice would be brought into disrepute if parties managed to get conflicting decisions which

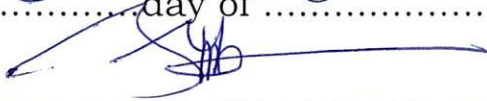
undermined each other from two or more different judges over the same subject matter”

8.7 The Defendant has demonstrated through his affidavit in opposition and Defence that communication was made to the Plaintiff that the purpose of the joint venture was for the supply of winter jackets to the Zambia Police service through a company called Auctus Investments Limited. The email exhibited as “MM2” clearing shows the communication by the Defendant to the Plaintiff outlining the business venture was done in his capacity as a director of the company.

8.8 It is from the forgoing that I find that it would be prudent to join the company as a party to these proceedings as it has an interest in this matter and it is likely to be affected by the outcome thereof. The Intended 2nd Defendant is joined as second Defendant accordingly.

8.9 Costs for both applications are in the cause.

Dated at Lusaka the day of 2025

30th October


JUDGE