

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

2023/HP/2122



BETWEEN:

PAMUSHI GAME RANCHING LIMITED

PLAINTIFF

AND

ANTI-CORRUPTION COMMISSION

1ST DEFENDANT

THE ATTORNEY GENERAL

2ND DEFENDANT

BEFORE HON. JUSTICE E. P. MWIKISA

FOR THE PLAINTIFF: MR. C. NYANGU OF MESSRS MOSHA & COMPANY

FOR THE 1ST DEFENDANT: MR. T. MUPETA- SENIOR LEGAL PROSECUTOR

FOR THE 2ND DEFENDANT: MRS. P.B. KABASO- STATE ADVOCATE

RULING

Cases Referred To:

1. *Zambia Mundia Sikatana v The Attorney-General (1982) Z.R. 109 (H.C)*
2. *URest Foams Limited v Puma Botswana (PTY) Limited & Another Selected Judgment No.27 of 2018*

Legislation Referred To:

1. *The High Court Act, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1999, Edition, White Book*

Other Works Referred To:

1. *Zambia Civil Procedure, Commentary and Cases, Volume 1*

This is the 1st defendant's application to raise a preliminary issue made pursuant to Order 33 Rule 3 and Order 14A of the Rules of the Supreme Court of England 1965, 1999 edition, White Book as read together with Order XXXIV (Rule 1 and 2) of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia. The application is dated 23rd April, 2025, and it raises the following questions:

- i) Whether a High Court Judge has jurisdiction to review the Judgment of another High Court Judge in particular reference to Order XXXIX of the High Court Act, Chapter 27 of the Laws of Zambia;**
- ii) And whether this Honourable Court has jurisdiction to entertain this matter;**
- iii) And that if this Honourable Court finds that it does not have the jurisdiction to hear this matter, then the 1st defendant humbly prays that the Plaintiff's cause of action be dismissed with costs to the Defendants.**

The application is supported by an affidavit and skeleton arguments of even date. The affidavit in support was deposed to by one Ian Mupeta, Counsel seized with conduct of this matter on behalf of the 1st defendant. It was deposed therein that on 24th November, 2023, the Plaintiff commenced this action as against the 1st and 2nd defendants by way of writ of summons and statement of claim in which it is seeking inter alia; reliefs of compensation for economic

loss, special damages in the sum of ZMW 20,000,000.00. Counsel deposed that the said claims stem from the background that the 1st defendant successfully prosecuted one Sande Langeni Kayumba, one Andrew Nyirongo and one Amon Sibanda (the parties) for corruption and abuse of authority of office in the Subordinate Court under Cause Number SSP/69/2004. That following the conviction of the said parties, the 1st defendant made an application to forfeit 3 farms that formed the Plaintiff company, 30,000 British Pounds, K63,607, 806 and a farm situated in Mkushi District, Central Province in the Republic of Zambia which application was granted by the Subordinate Court. It was deposed that in 2009, the parties appealed against their conviction in the High Court under Cause Number HPA/17/2009 and that their grounds of appeal did not impugn the forfeiture orders and that when the High Court quashed the parties convictions, it only set aside the forfeiture order relating to the farm in Mkushi district and no other as shown by copy of the trio's grounds of appeal as contained in the High Court Judgment dated 29th December, 2022.

It was deposed further that by this cause of action, the Plaintiff now seeks this Honourable Court to indirectly interpret the High Court's

Judgment under Cause Number HPA/17/2009 which judgment was delivered by Judge A.M. Banda Bobo and Justice A.M. Sitali on whether or not the High Court did set aside the forfeiture order relating to the Plaintiff company. It was deposed that the Plaintiff's court process herein amounts to a review of the High Court Judgment delivered by Justice A.M. Banda Bobo and Justice A.M. Sitali as the central theme lies in interpreting the Judgment. That the Plaintiff's court process is thus irregular and not supported by law as a High Court judge cannot review the Judgment delivered by another Judge. Further that the Plaintiff ought to have commenced an action for review of the High Court Judgment under Cause Number HPA/17/2009 within the stipulated period of 14 days from the date of judgment before the very Court that delivered the said judgment. Counsel sought the Court's indulgence to dismiss the Plaintiff's action as the Court lacks jurisdiction to entertain the action.

In opposing the application, the Plaintiff filed an affidavit in opposition dated 27th June, 2025, deposed to by one Lt. GEN. Sande Langeni Kayumba, the Director in the Plaintiff company. He deposed that the 1st Defendant's application comes as a ploy to delay the Plaintiff's action further as the 1st defendant has already taken steps

to defend this matter. The Plaintiff's Director deposed that the Plaintiff's farm was never forfeited to the state as alleged by the 1st defendant, but that it was just restricted, which restriction has since expired and that the said Subordinate proceedings do not show that the said Plaintiff's farm was forfeited to the State as shown by copy of the lands register showing the said restriction exhibited and marked "SLK1." Further that even assuming that the said Plaintiff's farm was indeed forfeited by the Subordinate Court Judgment as alleged by the 1st defendant, the argument would still not stand as the said Judgment is now null and void as it was wholly overturned by the High Court under Cause No. HPA/17/2009. Further that the High Court Judgment that the 1st defendant is citing, overturned the Subordinate Court Judgment and acquitted the Plaintiff's Directors of all charges, the basis on which the 1st defendant had restricted the Plaintiff's farm, and there is therefore no basis whatsoever for the defendants to cling on to the said farm, nor is there any merit for this application.

It was also deposed that there was nothing wrong with this Court interpreting its own judgment especially if it confuses one party and

that the same should not be mistaken for review. That the Plaintiff's court process does not amount to a review.

The Plaintiff concluded its deposition by stating that this Court has jurisdiction to hear the Plaintiff's case, which is for compensation for its wasted farm on account of the 1st defendant and that the 1st defendant's application lacks merit and be dismissed with costs.

When the matter came up for hearing on 30th June, 2025, Counsel for the 1st defendant, Mr Mupeta, submitted that the 1st defendant filed an application to raise a preliminary issue on 23rd April, 2025, accompanied by an affidavit and skeleton arguments which he would rely on.

In opposing the application, Counsel for the Plaintiff, Mr Nyangu, contended that an affidavit in opposition and skeleton arguments were filed to oppose the 1st defendant's application. Counsel augmented by arguing that the 1st defendant's application came in late and that there are triable issues in the case in casu which can only be dealt with at trial.

Counsel for the 2nd defendant, Mrs Kabaso, opted to leave the application to the discretion of the Court.

In reply, Mr Mupeta cited the case of Fredson Yamba where the Financial Crimes Division of the High Court held that even if a party has an issue with another party's originating process, it must first respond to the other party's originating process in order to serve time. That secondly, the forfeiture that the Plaintiff is contesting is attached to the 1st defendant's affidavit and thirdly that the Plaintiff's cause of action is premised on the interpretation of a judgment that was pronounced by another High Court Judge which in essence is a review of another Judge's decision and an infringement of Order 39 of the High Court Act. Counsel submitted that the Plaintiff should have applied for review before the same Court that rendered the judgment or indeed to appeal the same.

Mr Nyangu, responded by arguing that a perusal of the record will show that the Plaintiff seeks compensation and not review or forfeiture.

I have taken note of the skeleton arguments on the record.

I have carefully considered the affidavit evidence as well as the skeleton arguments on the record.

A brief background of this matter shows that the Plaintiff herein commenced this action on 24th November, 2023, claiming to be a bona fide holder of a valid certificate of title of Farm No. 2616, Chisamba in the Central Province of the Republic of Zambia. The Plaintiff, in this action, claims that the 1st defendant placed a restriction on the said property restricting it (the Plaintiff) from accessing it notwithstanding that the said property was used as a game ranch and for other commercial activities which if left unattended would go to waste.

The record shows that before this action, the 1st defendant herein prosecuted One LT. General Sande Langeni Kayumba, One Brigadier General Andrew Steady Kazungu Nyirongo and One Amon Sibande (the trio) for corruption and abuse of authority of office in the Subordinate Court under Cause No. SSP/69/2004. The trio was convicted on 3rd March, 2009, as per page 66 of the 1st defendant's bundle of documents. Page 68 of the 1st defendant's bundle of documents shows the Public Prosecutor applying to court to have properties forfeited to the State; which properties included Pamushi Game Ranching Ltd, the Plaintiff in this action.

The trio appealed the decision of the Subordinate Court in the High Court under Cause No. HPA/17/2009. LT. General Sande Langeni Kayumba, Brigadier General Andrew Steady Kazungu Nyirongo and Amon Sibande were acquitted as the High Court set aside their convictions and sentences on 29th December, 2022. The Plaintiff then commenced this action seeking inter alia; compensation for the economic loss of the use of the property, special damages for the loss of the caretaker's house, vegetation, domestic and wild animals worth the sum of ZMW 20,000,000.00 and Damages for the inconvenience caused.

The 1st defendant has now raised the following questions of law:

- i) Whether a High Court Judge has jurisdiction to review the Judgment of another High Court Judge in particular reference to Order XXXIX of the High Court Act, Chapter 27 of the Laws of Zambia;**
- ii) And whether this Honourable Court has jurisdiction to entertain this matter;**
- iii) And that if this Honourable Court finds that it does not have the jurisdiction to hear this matter, then the 1st defendant humbly prays that the Plaintiff's cause of action be dismissed with costs to the Defendants.**

What seems to be in contention between the Plaintiff and 1st defendant, in this application, is whether or not Farm No. 2616, was forfeited to the State. The 1st defendant is seemingly contending that

in determining this question, this Court would have to review the High Court Judgment in Cause No. HPA/17/2009.

In the case of **In the Matter of Protection of Fundamental Rights and Freedoms of the Individual and In the Matter of Arts 20(6) and 29 of the Constitution of Zambia Mundia Sikatana v The Attorney-General (1982) Z.R. 109 (H.C)¹**, which case is of persuasive value and I cite with approval, the High Court held as follows:

“(i) A Judge of the High Court has no jurisdiction to reopen and reconsider and interfere with and comment upon a matter already determined by another Judge of equal jurisdiction.

(ii) The fact that the case was first determined as a criminal matter and is then subsequently raised as a civil matter is irrelevant as long as it arises from the same facts and evidence”.

From the authority cited above, the question I ask myself is whether or not the questions raised by the Plaintiff in this civil action were already determined by Lady Justices Banda-Bobo and A.M Sitali in the criminal action under Cause No. HPA/17/2009 and whether they are arising from the same facts and evidence.

Counsel for the 1st defendant has argued that the Plaintiff’s cause of action herein is premised on the interpretation of a judgment that

was pronounced by another High Court Judge which in essence is a review of another Judge's decision. That the Plaintiff seeks to have this Court indirectly interpret the High Court's judgment passed by Lady Justices Banda-Bobo and A.M. Sitali on whether or not the High Court did set aside the forfeiture order relating to the Plaintiff company.

As shown earlier, the Plaintiff, in this case, seeks compensation for the economic loss of the use of the property, special damages for the loss of the caretaker's house, vegetation, domestic and wild animals worth the sum of ZMW 20,000,000.00. I wish to take judicial notice of both the Subordinate Court judgment under Cause No. SSP/69/2004 dated 3rd March, 2009, and the High Court judgment under Cause No. HPA/17/2009 dated 29th December, 2022, which judgments are both on the record.

I do agree with Counsel for the 1st defendant that the issues herein were dealt with by my learned sisters Judge Bobo and Judge Sitali (as she then was) who have equal jurisdiction as myself and for that reason alone, I do not have the jurisdiction to construe their judgment. I further agree with the learned Counsel for the 1st

defendant that the matters herein emanated from the criminal proceedings in the Subordinate Court which went on appeal to the High Court which rendered judgment in issue. The plaintiff herein should have applied for review of the judgment of the High Court then, to seek clarification on what assets were forfeited by the state through the 1st defendant. To bring the matter to the High Court by way of review goes against the provisions of order XXXIX (39) of the High Court Act, Chapter 27 of the Laws of Zambia.

I accordingly dismiss this case in its entirety.

I award no costs.

Leave to appeal is granted.

Dated at Lusaka this.....10th.....day ofNovember.....2025



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**ELITA PHIRI MWIKISA
HIGH COURT JUDGE**