IN THE HIGH COURT FOR ZAMBIA **2022/HPEF/10**
AT THE ECONOMIC AND FINANCIAL CRIMES REGISTRY

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

IN THE MATTER OF: **SECTION 61 OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT NO. 35 OF 2021**

AND

IN THE MATTER OF: **AN APPEAL AGAINST THE DECISION OF THE DIRECTOR GENERAL OF THE DRUG ENFORCEMENT COMMISSION**

BETWEEN:

BWALYA CHITALU KALANDANYA	**1ST APPELLANT**
KALANDANYA MUSIC PROMOTIONS	**2ND APPELLANT**
NSOCHITA GENERAL CONTRACTORS AND SUPPLIERS LIMITED	**3RD APPELLANT**

AND

THE ATTORNEY GENERAL	**RESPONDENT**
STANBIC BANK ZAMBIA LIMITED	**INTENDED 1ST WITNESS**
ECOBANK ZAMBIA LIMITED	**INTENDED 2ND WITNESS**

BEFORE THE HONOURABLE JUSTICES E.L. MUSONA, P.K. YANGAILO AND K. MULIFE ON THE 16TH AND 30th DAY OF JANUARY, 2023.

APPEARANCES:

For the Appellants: Mr. Malisa Batakati and Mr. I. Simbeye
Messrs Muyatwa Legal Practitioners.

For the Respondent:

1. Mrs. K. Mundia, Acting Deputy Chief State Advocate
2. Ms. Gladys K. Tembo, Senior State Advocate
Attorney General's Chambers.

JUDGMENT

MULIFE K., J. DELIVERED THE JUDGMENT OF THE COURT.

CASES REFERRED TO:

1. Attorney General and Another v Akashambatwa Mbikusita Lewanika and Others (1994) S.J. (S.C).
2. Simumba v Anti-Corruption Commission (HP 637 of 2014) ZMHC.
3. The People v Austin Chisangu Liato, Appeal No. 291 of 2014.
4. Woolmington v DPP [1935] AC 462.
5. Mwewa Murono v The People (2004) Z.R. 207.

STATUTES REFERRED TO:

1. Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia.
2. High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia.

3. Narcotic Drugs and Psychotropic Substances Act Number 35 of 2021.
4. Prohibition and Prevention of Anti-Money Laundering Act No. 14 of 2001.
5. Anti-Corruption Act No. 3 of 2012.

1.0 INTRODUCTION

1.1 This is a Judgement on the Appellants' **Notice of Appeal** filed into Court on 9th September, 2022, pursuant to **Section 61 of the Narcotic Drugs and Psychotropic Substances Act No. 35 of 2021** (hereinafter referred to as the **'Narcotic Drugs and Psychotropic Substances Act'**). The provision states as follows:

> ***"(1) The Director-General may, where the Director-General has reasonable grounds to believe that a third party is holding any property, including money in a bank account for on or behalf of, or to the order of, a person who is under investigation, serve a notice on the third party directing that the third party shall not dispose of, or otherwise deal with, any property specified in the notice without the consent of the Director-General.***

(2) A notice issued under subsection (1) shall be served on the third party to whom it is directed and on the person being investigated.

(3) The Director-General may, in issuing a notice under this section, impose conditions that the Director-General may determine.

(4) A notice issued under subsection (1) shall have effect from the time of service on the person to whom it is addressed and shall continue in force for a period of nine months unless cancelled by the Director-General, whichever is earlier, except that the Director-General may issue a fresh notice on the expiry of the previous one for a further final term of six months to facilitate the conclusion of an investigation.

(5) A third party on whom a notice is served under subsection (1) who disposes of, or deals with, the property specified in the notice without the consent of the Director-General commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years.

(6) A third party on whom a notice is served under this section shall not dispose of, or otherwise deal with, the property specified in the notice except in accordance with the terms of the notice.

(7) A person aggrieved with the directive of the Director-General issued under subsection (1) may appeal to the High Court".

1.2 The Notice of Appeal was prompted by the Appellants' dissatisfaction with the decision or directive of the Director General of the Drug Enforcement Commission (DEC), to restrict and/or seize the Appellants' following Bank Accounts:

a. For BWALYA CHITALU KALANDANYA (The 1st Appellant)

(i) 9130000289500 held with Stanbic Bank Zambia Limited at his Mulungushi Branch in Lusaka.

(ii) 9130001352842 held with Stanbic Bank Zambia Limited at its Mulungushi Branch in Lusaka, Zambia.

(iii) 0037503844501 held at Ecobank Zambia Limited at its Lewanika Mall Branch.

b. For KALANDANYA MUSIC PROMOTION (The 2nd Appellant)

(i) 5615000009216 held with Ecobank Zambia Limited at its Lewanika Mall Branch in Lusaka, Zambia.

c. For SONCHITA GENERAL CONTRACTORS & SUPPLIERS LIMITED (The 3rd Appellant)

(i) 9130000186205 held with Stanbic Bank Zambia Limited at its Mulungushi Branch in Lusaka, Zambia

(ii) 5615000003383 held at Ecobank Zambia Limited at its Thabo Mbeki Branch

(iii) 551500008813 held at Ecobank Zambia Limited at its Thabo Mbeki Branch.

1.3 The Notice of Appeal further contends that the directive of the DEC to restrict and/or to seize the mentioned Bank Accounts and the money therein, is or otherwise illegal as the DEC did not serve the Appellants with any such Restriction or Notices as required by the law. Further, that the Notices have expired.

1.4 The Notice of Appeal was heard on 16th and 30th January, 2023.

2.0 HEARING

2.1 On 12th December, 2022, the Appellants' Summons to Compel Attendance of Witnesses and Production of Documents was granted. The witnesses who were compelled to testify are AW1 and AW3.

2.2 AW1 testified first. She is Jinga Kapinga, a Head of Compliance at Eco Bank Zambia Limited. She told the Court that her duties include ensuring that Eco Bank's

employees and Board of Directors comply with the laws of Zambia and the Bank's internal policies. She stated that the 1st and 2nd Appellants maintain bank accounts with the Bank. That on 27th December, 2021, the Bank was served with a Notice of Seizure by the DEC, relating to among other bank accounts, two of the bank accounts in issue. The witness identified and tendered in evidence, the stated Notice of Seizure. It was marked exhibit P1. It indicates that it is issued pursuant to the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001** of the Laws of Zambia (hereinafter referred to as the **'Prohibition and Prevention of Money Laundering Act')**. With respect to the present matter, it relates to bank account no. 5615000009216 belonging to the 2nd Appellant and bank account no. 5615000003383 belonging to the 3rd Appellant.

2.3 There was no cross-examination. The evidence of AW2 was abandoned by the Appellants. As such, it shall not be recited. AW3 was Olivia Mooya, an Analyst in the Anti-Money Laundering Unit of the Compliance Department at Stan Bic Bank Zambia Limited. She informed the Court

that her duties include receiving warrants and notices of seizure served by law enforcement agencies. That on 27th December, 2021, the Zambia Police and the DEC served on her, a Notice of Seizure and a Warrant to Inspect Bankers' Books respectively. That the Notice of Seizure is intended to freeze bank accounts maintained by the 1st and 3rd Appellants. That once frozen, the account holder cannot access the account. Further, while funds can be deposited, they cannot be withdrawn from the account. She stated that she cannot tell if the accounts in issue received deposits from the time they were frozen.

2.4 AW3 identified and tendered in evidence, the Notice of Seizure and Warrant to Inspect Bankers' Books, in issue. They were marked exhibits P2 and P3, respectively. Exhibit P2 indicates that it is issued pursuant to the Prohibition and Prevention of Money Laundering Act. It relates to bank account no. 9130000289500 and 9130001352842 belonging to the 1st Appellant. Exhibit P3 relates to bank account no. 9130000186205 belonging to the 3rd Appellant.

2.5 AW3 stated that the amounts of money that were restricted on exhibit P2 are as follows: K139, 350.44, K54, 627.34 and US $5, 036.80, relating to bank account nos. 9130000289500, 91133000186205 and 9130001352842 respectively.

2.6 There was no cross-examination. AW4 was the first Appellant. He stated as follows: that the 2nd and 3rd Appellants are his companies and the Bank Accounts in issue belong to the Appellants; that on 27th December, 2021, as he wanted to draw salaries for workers, he discovered that the subject restrictions were placed on the bank accounts in issue on grounds that there were investigations being carried out; that to date, he has not been questioned by law enforcement agencies in connection with the bank accounts in issue.

2.7 AW4 stated that the Appellants had contracts with the National Road Fund and National Airports which remitted funds into the accounts in issue; that the restrictions have caused them hardships in terms of paying workers' salaries so that from a workforce of 110, there are now

only 10 workers remaining. And, that they are also unable to pay for licenses.

2.8 AW4 prayed for an Order of this Court allowing the Appellants to access the bank accounts in issue.

2.9 Under cross-examination by Ms. Tembo, AW 4 stated that he has been questioned by the DEC but not in connection with the bank accounts in issue and that the DEC did not expressly inform him that they were not questioning him in connection with the subject bank accounts.

2.10 During re-examination, AW4 stated that the DEC asked him about contracts which the Appellants had gotten and the Appellants submitted the names of the contracts.

2.11 This marked the close of the Appellants' case. The Respondent did not call a witness. Parties informed the Court that they would rely on the evidence on record and head of arguments

3.0. WRITTEN SUBMISSIONS

3.1. The Appellants filed final submissions into Court on 6th February, 2023 in which their Legal Counsel first outlined events leading to the Notice of Appeal. This is as averred in the Notice of Appeal and AW4.

Counsel also recited the testimonies of the Appellants' witnesses on record.

3.2. Counsel submitted that the Appellants instituted this action pursuant to the Narcotic Drugs and Psychotropic Substances in the unintentional mistaken belief that the bank accounts in issue were restricted pursuant to the provisions of the stated Act. That this mistake was triggered by failure by the Respondent and the Banks at which the accounts are maintained, to avail the Appellants with the documents pursuant to which the accounts were frozen, after attempts by the Appellants to obtain the documents. That after having been availed the documents through the Court process, the Appellants are now aware that the accounts in issue were seized pursuant to **Section 15 of the Prohibition and Prevention of Anti-Money Laundering Act No. 14 of 2001** (hereinafter referred to as the **'Prohibition and Prevention of Anti-Money Laundering Act'**). The provision states as follows:

"An authorised officer shall seize property which that officer has reasonable grounds to believe that the property is derived or acquired from money laundering".

3.3. It was submitted that according to the Appellants' witnesses, the effect of the Respondent placing the Notices of Seizure (exhibits P1 and P2) onto the bank accounts in issue, is to freeze or restrict the withdrawal of money from the accounts. That as it may, Counsel argued that the restriction does not apply to money that is deposited into the accounts after the placement of the Notices of Seizure. Rather, it only affects the money that is named on the Notices of Seizure or property that was in existence at the time of the Notices of Seizure. This, Counsel submitted, is because, **Section 15 of the Prohibition and Prevention of Anti-Money Laundering Act**, pursuant to which the Notices were placed, envisages existing and determinable property at the time the Notice was placed and not property acquired in the future or property that is not specified in the Notice. That therefore, exhibits P1

and P2 should only affect money that was deposited into the bank accounts in issue after their placement.

3.4. Counsel further submitted that the stated **Section 15 of Prohibition and Prevention of Anti-Money Laundering Act**, does not empower the officers of the DEC to freeze a bank account as a bank account does not amount to property of the account holder for purposes of seizure. Rather, that the provision only empowers authorised officers to seize already acquired, determined and described property.

3.5. Next, the Appellants argued that even assuming that the seized property existed and fell within the definition provided for under **section 2 of the Prohibition and Prevention of Anti-Money Laundering Act**, the impugned actions of the DEC freezing the Appellants' bank accounts should be found to be illegal because the DEC has not demonstrated to the Court, 'the reasonable belief', as prescribed by **Section 15 of the Prohibition and Prevention of Anti-Money Laundering Act**, which triggered the placement of the impugned Notices of

Seizure. That the DEC needed to demonstrate to the Court, their belief that the Appellants acquired or derived the money through money laundering as that would have justified the placement of the impugned Notices of seizure. That their failure to demonstrate such belief is fatal to the Notices of Seizure.

3.6. It was submitted that although the Prohibition and Prevention of Money Laundering Act does not expressly require service of the Notice of Seizure on the affected person, a purposive interpretation of Part VI of the Act under which section 15 (pursuant to which the subject warrants of seizure were issued) entails that a warrant of seizure must be served on the affected party. That service of the warrant is necessary as it is the only basis upon which the affected person can be able to challenge the seizure or reclaim the seized property in line with and within the timeframe stipulated by section 18 of the Act. That this position is supported by the warning directed to the affected party as expressed on the warrant. In urging the Court to adopt a purposive

interpretation of the Prohibition and Prevention of Money Laundering Act, Counsel cited the case of The **Attorney General and Another v Akashambatwa Mbikusita Lewanika and Others (1)**.

3.7. Based on the foregoing, Counsel submitted that a warrant of seizure issued under the Narcotic Drugs and Psychotropic Substances Act does not have perpetual effect as suggested by Counsel for the Respondent.

3.8. In conclusion and arising from the foregoing, Counsel prayed for an Order of this Court allowing the Appellants access to all their money held-up in the bank accounts in issue. That in the event the Court finds that the Notices of Seizure were legally issued, they should not relate to the money that was subsequently acquired and credited to the accounts.

3.9. These are the Appellants' written final Submissions. Final written submissions for the Respondent were filed into Court on 14th February, 2023 in which Counsel conceded that **Section 61 of the Narcotic Drugs and Psychotropic Substances Act** requires

service of a notice of seizure issued pursuant to that provision, to be served on a third party who is holding the seized property on behalf of the person under investigations and on the person being investigated. That however, the impugned Notices of Seizure (exhibits P1 and P2) were not issued pursuant to the Narcotic Drugs and Psychotropic Substances Act. Rather, they were issued pursuant to the Prohibition and Prevention of Money Laundering Act particularly section 15 and that this provision does not require service of the notice of seizure on the person under investigation.

3.10. Further, that **section 16 of the Prohibition and Prevention of Money Laundering Act** does not state the timeframe for which the notice of seizure issued pursuant to **Section 15 of the Act**, is valid. That therefore, the stated **sections 15 and 16 of the Prohibition and Prevention of Money Laundering Act** defeats the Appellants' claims that the Notices of Seizure in issue are illegal for not having been served on the Appellants and for having been expired.

3.11. Counsel further urged this Court to dismiss the Appellants' argument that the Respondent's (the DEC) acted without reasonable belief that the money in issue was seized because it was acquired through money laundering. That this is because the Appellants have not proved their assertion. In support of this argument, we were referred to the following holding of the Court according to the case of **Simumba v Anti-Corruption Commission (2):**

> ***"The Plaintiff has not adduced any evidence to show that the Director – General acted with malice when exercising the power to issue the restriction notice under section 24(1) of the 1966 Act. He has also not shown that the exercise of the power was done in bad faith. Further, the Plaintiff has not demonstrated that the decision to issue the restriction notice in order to facilitate instigations against the Plaintiff for crimes allegedly or suspected to have been committed under the Act of 1966 was not exercised for the public good".***

3.12. It was further submitted that this action was commenced using a wrong mode. That since the

Narcotic Drugs and Psychotropic Substances Act pursuant to which the Notices of seizure in issue were issued does not provide for the mode of commencement, the action should have been commenced by way of a writ of summons pursuant to **Order VI, Rule 1 of the High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia** (hereinafter referred to as the **'High Court Rules'**) That in the result, the action should be dismissed on the basis of **Order 14A of the Rules of the Supreme Court of England and Wales**.

3.13. Counsel submitted that the Appellant's money which was credited to the bank accounts in issue is liable to seizure because the DEC has interest in it. That if the Court were to order for the release of the subject money, it would be contrary to public interest because it would be tantamount to stopping criminal investigations.

3.14. In conclusion and based on the foregoing, Counsel urged us to dismiss the Appeal.

3.15. The Appellants filed Submissions in Reply on 20th February, 2023 in which they recited their earlier submissions save to add as follows: that the present matter is under the criminal jurisdiction of the Court as guided by the Court in its Ruling delivered on 4th November, 2022. Therefore, **Order VI of the High Court Rules** which the Respondent has submitted to have been the basis of the action, is not applicable as the provision only applies in the civil jurisdiction of the Court. Therefore, the action cannot be dismissed on that basis. That in any case, the Respondent has not demonstrated any prejudice it will occasion if the matter is determined on the merits.

3.16. It was submitted that contrary to the Respondent's submission, the burden to prove that reasonable belief that the property in issue was derived or acquired from money laundering within the meaning of **section 15 of the Narcotic Drugs and Psychotropic Substances Act**, lies on the state and not the person under investigations, which the

Respondent's agents have failed to demonstrate in the present case. Counsel referred the Court to the following holding of the Supreme Court of Zambia in the case of **The People v Austin Chisangu Liato (3)**: ***"it is obvious to us that it is the prosecution which must harbour the reasonable" suspicion and which must prove it".***

3.17. That in the Simumba case cited by the Respondents, the Plaintiff alleged malice against him on the part of the Anti-Corruption Commission and it was for that reason that the Court shifted the burden onto him to prove his allegation.

3.18. Counsel recited the Appellants' prayers.

4.0. CONSIDERATION AND DECISION

4.1. We have considered the Notice of Appeal, the oral evidence and written submissions for which we are indebted to Counsel for both parties. We shall henceforth outline our determination.

4.2. It is not in dispute that the Notices of Seizure (exhibits P1 and P2) were placed on the Appellants' Bank Accounts in issue, on 27th December, 2021. Further, once placed on

the Bank Accounts, the Appellants have been unable to withdraw money from the accounts.

4.3. It is also not in dispute that the stated Notices of Seizure were not served on the Appellants and were only availed to them through an Order of this Court which compelled AW1 and AW3 to testify. In dispute and for determination by this Court are the following issues:

(i) Who, between the Appellants and the Respondent has the onus to prove that the seized money in the Appellants' Bank Account in issue is reasonably believed to have been acquired from money laundering;

(ii) Whether the Respondent needed to serve the Notices of Seizure in issue on the Appellants;

(iii) Whether or not the Notices of Seizure in issue have perpetual effect; and

(iv) Whether the Notices of Seizure have effect on property which is not mentioned therein.

4.4. We shall handle the issues seriatim. Regarding the first issue in dispute, **Section 15 of the Prohibition and Prevention of Money Laundering Act**, pursuant to which

the impugned Notices of Seizure were issued, is clear in terms of which party should harbour a reasonable belief that the property intended to be seized, is derived or acquired from money laundering. Our understanding of the provision is that it is the 'authorised officer' who must harbour the reasonable belief and not the person who is affected by the seizure. It also follows that it is the person harbouring such belief who must prove the basis of its existence to the court. This interpretation makes sense considering that it is such belief which leads to the seizure of property.

4.5. In any event, the Notices of Seizure in issue, having been taken out for purposes of facilitating investigations into an alleged crime of money laundering, places the burden of proof (in the absence of a statutory provision to the contrary), on the party that is alleging criminality in the manner the money in issue was acquired. This is the settled principle of criminal law according to a plethora of celebrated cases such as **Woolmington v DPP (4)** and **Mwewa Murono v The People (5)**. The case of **Simumba v Anti-Corruption Commission** cited by the Respondent,

re-states the same principle in the sense of requiring the party (Plaintiff) that alleged malice on the part of the Anti-Corruption Commission, to prove its allegation. We have therefore found that the case has been cited out of context in as far as the Respondent is seeking to rely on it to suggest that the burden of proof lies on the suspect or accused (the Appellant) instead of the party that is alleging criminality, (the Respondent).

4.6. Turning to the present case, the party that must harbour the belief and prove it to the Court, is the officer of the Respondent who placed the Notices of Seizure in issue on the Appellants' Bank Accounts and not the Appellants. Therefore, it is a misdirection for the Respondent to submit that the Appellants have the onus to prove that there are no reasonable grounds for the Respondent to believe that the seized money was acquired or derived from money laundering. Placing the burden of proof on the Appellants is to require them to prove their innocence which is a violation of their fundamental due-process right to be presumed innocent until proven guilty, as guaranteed under **Article 18(2)(a) of the Constitution, Chapter 1 of**

the Laws of Zambia (hereinafter referred to as the **'Constitution')**.

4.7. As regards whether the Respondent has proved before this Court, the existence of its belief which triggered the placement of the impugned Notices of Seizure on the Appellants' Bank Accounts, it is not in dispute that such evidence has not been availed as no witness or exhibit of any sought was tendered. It is for this reason that it is attempting to shift the burden of proof onto the Appellants. We thus find that the Respondent has not discharged the burden placed on it by **Section 15 of the Prohibition and Prevention of Money Laundering Act**. Under the circumstances, the impugned Notices of Seizure have no basis for which they can be sustained. They therefore stand discharged.

4.8. Had it not been for the jurisprudential value of some of the remaining issues in dispute, we could have ended our Judgment here considering that the overall question in this matter is whether or not the impugned Notices of Seizure should be discharged. We shall thus determine the next issue in dispute, namely, whether the Respondent

needed to serve the Notices of Seizure in issue on the Appellants.

4.9. Parties have expressed opposing views as on the one part, the Appellants contend that the Respondent had an obligation to serve the Notices of Seizure on the Appellants while on the other part, the Respondent asserts that they are not under an obligation to serve. As highlighted already, the Notices of Seizure were issued pursuant to **Section 15 of the Prohibition and Prevention of Money Laundering Act**. The provision does not state that the Notices of Seizure must be served on the party affected by the seizure, in this case, the Appellants. However, a reading of the provision alongside other provisions of the same Act, disclose that the Respondent was under an obligation to serve the Notices of Seizure on the Appellants. Thus for example, **Section 18 (1) (b) of the Act**, envisages representations from persons who are lawfully entitled to the seized property. Logically, such a person can only make a representation if s/he has been notified about the seizure. This view is supported by the warning that is expressed on the prescribed Form of the Notice of Seizure.

The warning affirms the requirement of the Respondent to serve the Notice of Seizure on the party affected by the Seizure as this is the only mechanism by which s/he is notified of his right to make representations with a view to reclaim the seized property, should s/he desire to do so. For avoidance of doubt, the Notice states as follows:

> ***"you are warned that these goods may be declared to be forfeited to the State under Section 17 of the Prohibition and prevention of Money Laundering Act No. 14 of 2001".***

4.10. The view expressed above is further supported by the settled principle that a person cannot be condemned unheard. Accepting the Respondent's submission entails condemning the Appellants without giving them an opportunity to be heard. In any event, ownership of property being a fundamental right guaranteed by **Article 16(1) of the Constitution**, cannot be taken away from the Appellants without giving them an opportunity to be heard.

4.11. In the present case, as stated already, it is not in dispute that the impugned Notices of Seizure were not served on the Appellants. This renders them illegal and invalid.

4.12. The next issue in dispute is whether or not the Notices of Seizure in issue have perpetual effect. Whereas the Appellant contends that the Notices have a period of validity, the Respondent contends that they have perpetual effect. Suffice to state that **Section 15 of the Prohibition and Prevention of Money Laundering Act** pursuant to which the Notice of Seizure is issued, is mute on this aspect. That as it may, guidance has been provided in other provisions of the Prohibition and Prevention of Money Laundering Act relating to the property that has been seized pursuant to **Section 15 of the Act**. **Section 18(1) of the Act** is particularly insightful in the sense of permitting for representations from persons who are lawfully entitled to the seized property and the institution of proceedings relating to the seized property or the person from whom the property is seized, to be made within six months of the date of the seizure. By logical implication therefore, a Notice of Seizure issued pursuant to **Section 15 of the Act**, has a validity period of six months from the date it is placed on a property.

4.13. The principle applies to the impugned Notices of Seizure. They stood valid for a period of six months with effect from 27th December 2021 when they were placed on the Appellant's Bank Accounts so that in the absence of representations by the Appellants or legal actions against them or the property, by the Director-General of the DEC, the latter should have applied for forfeiture of the money involved. In the present case, no further action was taken after the placement of the Notices of Seizure on the Appellants' bank accounts in issue and this is a period well in excess of sixteen months. For this reason, the Notices of Seizure remain invalid.

4.14. The last issue in dispute is about the property envisaged by a Notices Seizure issued pursuant to **Section 15 of the Prohibition and Prevention of Money Laundering Act.** Our understanding of the provision is that it envisages proceeds of the money laundering act in issue. The proceeds can be in existence because they have been harvested or they can be non-existent because they are yet to be harvested from the illegal act.

4.15. About whether or not the Appeal is properly before us, the Respondent has submitted that the proceedings should have been brought by way of a Writ of Summons pursuant to **Order VI of the High Court Rules**. That having not been commenced by Writ of Summons, the Appeal is improperly before this Court and should, on that basis be dismissed.

4.16. As guided in our Ruling delivered in this matter on 4th November, 2022, these proceedings are criminal in nature. Therefore, in terms of procedure, they are guided by the **Criminal Procedure Code** as well as rules provided for under applicable penal statutes and not the civil procedure rules, as suggested by the Respondent. Further, we agree with the Respondent that the **Prohibition and Prevention of Money Laundering Act** pursuant to which the impugned Notices of Seizure were issued, does not expressly provide for the procedure for seeking redress against a seizure of property made pursuant to **Section 15 of the Act**, such as the one in issue. However, a reading of other provisions in the same Act and legislations of similar scope, suggest that recourse lies to the High

Court of which this Court is a Division. Thus for example, **Section 18(3)(4) of the Prohibition and Prevention of Money Laundering Act** enact that the Commissioner of the Respondent is empowered to refer to the High Court, a dispute involving a claim for property seized pursuant to **Section 15 of the same Act**. The present matter, being a claim for property that was seized pursuant to **Section 15 of the Prohibition and Prevention of Money Laundering Act**, it can be logically inferred that the High Court is the appropriate forum.

4.17. Going forward, the **Prohibition and Prevention of Money Laundering Act** does not provide for the mode of seeking redress in the High Court. However, the mode can be inferred from legislation of similar scope such as **Section 61(1)(7) of the Narcotic Drugs and Psychotropic Substances Act** which prescribe that a person who is aggrieved with a Restriction Notice issued by the Director-General of the DEC, can appeal to the High Court for redress. **Section 60(1)(5) of the Anti-Corruption Act No. 3 of 2012** has a similar result relating to a person who is aggrieved by a Restriction Notice issued

by the Director-General of the Anti-Corruption Commission. It being a cannon of interpretation that in construing a statute, reliance can be placed on statutes of similar scope, it can be presumed that the legislature intended that recourse for a person who is aggrieved with a seizure of property under **Section 15 of the Prohibition and Prevention of Money Laundering Act**, is possible by way of appeal to the High Court as similarly prescribed by the Narcotic Drugs and Psychotropic Substances Act as well as the Anti-Corruption Act.

5.0. CONCLUSION

5.1. In conclusion and based on the reasons outlined above, we have found merit in the Appeal. We accordingly discharge the two Notices of Seizure that were placed on the Appellants' Bank Accounts by the Respondent on 27th December, 2021. Thereby, the Appellants shall forthwith have access to their bank accounts in issue by way of withdrawing or depositing money therein.

5.2. Leave to appeal is granted.

SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 21ST DAY OF APRIL, 2023

E. L. MUSONA

HIGH COURT JUDGE

P. K. YANGAILO

HIGH COURT JUDGE

K. MULIFE

HIGH COURT JUDGE