

3. NOV 2021
IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

CAZ Appeal No. 252/2020
CAZ/08/331/2020

IN THE MATTER OF: **SECTIONS 29, 30 AND 31 OF THE**
 FORFEITURE OF PROCEEDS OF CRIME ACT
 No. 19 OF 2010 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: **SECTION 120(B) OF THE ENVIRONMENTAL**
 MANAGEMENT ACT No. 12 OF 2011 OF THE
 LAWS OF ZAMBIA

AND

IN RE PROPERTY: **FUSO TRUCK REGISTRATION NUMBER ALV**
 9176 AND 100 LOGS OF PTEROCARPUS
 CHRISOTHRIX (MUKULA TREE LOGS)

BETWEEN:

NACHANGA TRANSPORT

APPELLANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

CORAM : Chishimba, Ngulube and Siavwapa JJA

On the 23rd September, 2021 and 30th November, 2021

For the Appellants : Mr. Mweene & Mr. K Lwanga of Messrs. G M
 Legal Practitioners.

For the Respondents: F. M. Sikazwe & Ms C. A. Bauleni of Messrs.
 National Prosecutions Authority.

J U D G M E N T

Chishimba JA, delivered the Judgement of the Court.

CASES REFERRED TO:

- 1) Nahar Investments Limited v Grindlays Bank International (Z) Limited (1984) ZR 81
- 2) Chikuta v Chipata Rural Council (1974) ZR 241
- 3) New Plast Industries v Commissioner of Lands and Attorney General (2001) ZR 5
- 4) Attorney General v Rodger Chongwe SCZ Appeal No. 122/2016
- 5) Aristogerasimos Vangelotos & Vasiliki Vangelatos v Metro Investments Limited & Others SCZ/8/122/2012
- 6) Wilson Masautso Zulu v Avondale Housing Project (1982) ZR 173
- 7) Miyanda v The High Court (1984) ZR 62
- 8) Ventriglia and Manuela Sebastian Ventriglia v the People Appeal 37/2019
- 9) Chishala Karabasis Nivel and Sharon Mwale v Laston Geoffrey Mwale Appeal 161/2015

LEGISLATION CITED:

1. The Forfeiture of Proceeds of Crime Act No. 19 of 2010
2. The High Court Rules Chapter 27 of the Laws of the Zambia
3. Environmental Management Act No. 12 of 2011

1.0 INTRODUCTION

- 1.1 This is an appeal against the ruling delivered by the Hon, Mrs. Justice E. P. Sunkutu dated 31st July 2020 in which she ordered the forfeiture to the State of the Fuso truck registration number ALV 9176 and one hundred (100) logs of Pterocarpus Chrisothrix otherwise known as Mukula tree.

2.0 FACTUAL BACKGROUND

- 2.1 The evidence before the court below as deposed by Deputy Inspector Henry Choti Phiri, a police officer stationed at

Nakonde Police Station is as follows; that on or about 29th December, 2018, he was conducting a patrol in Nakonde District when he intercepted a Fuso truck laden with 100 logs of Mukula tree. The driver of the truck fled the scene and has never been apprehended. His identity remains unknown. The Fuso truck belongs to Nachanga Transport a company in Nakonde. The truck was kept at Nakonde Police Station. Upon detention of the truck, the detained respondent filed a Notice of Motion for non-conviction based forfeiture order of property on the above basis.

2.2 The application was opposed by an affidavit deposed to by Martin Singogo, the manager of a family enterprise known as Nachanga Transport. He deposed in the court below that the truck in issue belongs to his grandfather, one Layton Simwawa who is infirm due to old age. In September 2018, he employed Rodger Simbeye as driver of the truck. On 29th December, 2018, Simbeye informed Singogo by phone that he had been hired to ferry sand from Chilolwa to Madwa within Nakonde district. Thereafter, Simbeye's phone was turned off and remains unreachable to date.

2.3 Singogo stated that he was later informed that the truck had been impounded loaded with Mukula logs at Nakonde Police Station. On making a follow up, the police declined to release the truck demanding that the driver avails himself. Efforts to locate the driver by both the appellant and the police have proved futile. Mr. Singogo objected to the forfeiture of the truck on the ground that he did not permit the driver to carry illegal goods.

3.0 **DECISION OF THE COURT BELOW**

3.1 In her ruling, Judge Sunkutu considered the affidavit evidence before her and reasoned that having been found laden with 100 Mukula logs, the truck in issue became tainted property in terms of the Act. The court considered **section 12(2)(a) and (b) of the Forfeiture of Proceeds of Crime Act No. 19 of 2010 (herein after the Act)** which provides as follows:

“(2) Where a person applies to the court for an order under this subsection in respect of the person's interest in any property and the court is satisfied that—

(a) The applicant has an interest in the property;

(b) The applicant was not in any way involved in the commission of the offence in respect of which the

forfeiture of the property is sought, or the forfeiture order against the property was made; and

(c) The court may make an order declaring the nature, extent and value, as at the time when the order is made, of the applicant's interest.”

3.2 In this regard, the two-fold test to be satisfied in view of the application was whether the claimant has an interest in the property in issue and secondly, whether the claimant was in no way involved in the commission of the offence. As regards the first test, the lower court stated by commenting on the fact that though the truck was impounded on 28th December, 2018, the appellant only sought legal recourse four months later instead of at the earliest opportunity. This conduct showed a curious lack of seriousness. The failure of the appellant to take prompt steps until there was an application by the State for forfeiture, was fatal to the application in terms of the case of **Nahar Investments Limited v Grindlays Bank International (Z) Limited** ⁽¹⁾ as the appellant slept on its rights.

3.3 The court found and held that the truck is not registered in the name of the appellant to prove ownership and therefore,

establish legitimate interest and claim thereto. Though a motor vehicle registration certificate was exhibited in the name of Layton Simwawa as owner, no evidence was adduced as to whether or not the truck had been bequeathed to Singogo or that he was duly authorized to use it. This rendered the claim to the truck doubtful. Consequently, the court below found that the respondent had not shown sufficient interest in the property.

3.4 With respect to the second test of the claimant not being involved in the commission of the offence, the court below was of the view that the appellant ought to have, in the first instance, provided evidence from the person who hired the vehicle to ferry sand to show that there was such an agreement. Secondly, the appellant ought to have availed concrete proof showing that it was never a party to the illegal transaction.

3.5 The lower court found that no evidence was led on a balance of probabilities to show what instructions were actually given to the driver, that is, whether he was expressly forbidden to carry illegal cargo. Therefore, in the absence of any proof that the driver acted contrary to instructions from his manager, the

respondent was bound by any transaction that the driver involved himself in, including the ferrying of the Mukula logs.

3.6 Consequently, on a balance of probabilities, the court below found that the appellant had not demonstrated that it has an interest in the property sought to be forfeited. It proceeded to order the forfeiture to the State of both the Fuso truck and the 100 logs of Mukula tree.

4.0 **GROUND OF APPEAL**

4.1 The appellant has appealed against the decision of court below advancing three grounds couched as follows:

- 1. The High Court erred in law and fact in determining the matter on the merits despite the court lacking jurisdiction owing to the respondent having used the wrong mode of commencement to move the High Court;*
- 2. The court below erred in law and fact when it held that the Fuso Truck with Registration Number ALV 9176 is tainted property despite the record being devoid of any evidence of the truck being a proceed of crime or having been purchased from proceeds of crime; and*
- 3. The court below misdirected itself in law and fact when it directed and ordered forfeiture of the Fuso Truck with Registration Number ALV 9176 to the State despite the illegal haulage of Pterocarpus Chrisothrix (Mukula Tree) logs having been done by the appellant's employee outside the course of employment.*

5.0 **APPELLANT'S ARGUMENTS**

- 5.1 In its heads of arguments, the appellant indicated that it was abandoning ground two. In ground one, the appellant submitted that a perusal of the notice of motion and affidavit filed by the respondent in the court below, shows that the respondent commenced a fresh or new action as opposed to an interlocutory application. The application before the court below did not arise from a conviction but a non-conviction based application. This was contrary to **Order 6 Rule 1 of the High Court Rules (HCR) Chapter 27 of the Laws of the Zambia** which provides the default mode of commencement of a fresh or new action in the High Court as being by way of writ of summons accompanied by a statement of claim unless a specific rule or law provides a different mode of commencement.
- 5.2 To fortify the argument, the cases of **Chikuta v Chipata Rural Council** ⁽²⁾ and **New Plast Industries v Commissioner of Lands and Attorney General** ⁽³⁾ were cited for the principle that the correct position is that the mode of commencement of any action is generally provided by the relevant statute.

- 5.3 The appellant further submitted that the application before the lower court was commenced by way of notice of motion pursuant to **Order 30 Rules 15 and 17 of the HCR** which does not provide for originating process or commencement of a fresh or new action but rather a mode of making an interlocutory application in a matter already before the court. It was further contended that neither the **Forfeiture of Proceeds of Crime Act** nor **the Environmental Management Act No. 12 of 2011** or the regulations thereunder provide that a fresh or new civil action for a non-conviction-based forfeiture must be commenced by notice of motion as was done by the respondents.
- 5.4 In this regard, it was submitted that the lower court was improperly moved by the respondent to make an order for forfeiture of the subject truck as the court below did not have the requisite jurisdiction to hear and determine the application. The case of **Attorney General v Rodger Chongwe**⁽⁴⁾ was cited where the Supreme Court held that the court has no jurisdiction to entertain and award judgment on claims that have been wrongly commenced. Consequently, the absence of jurisdiction nullified whatever decision followed from such proceedings as

was held in **Aristogerasimos Vangelotos & Vasiliki Vangelatos v Metro Investments Limited & Others⁽⁵⁾**.

- 5.5 With respect to ground three, the appellant contended that there is no evidence on record to support the findings of fact by the court below that the illegal haulage of Mukula tree logs by the driver of the truck was “blessed by the employer”, and that the appellant participated in the illegality. The unchallenged evidence on the record shows that the driver, Roger Simbeye acted independent of the knowledge and authority of his employer in the illegal haulage. The driver acted outside his course of employment of ferrying sand from Chilolwa to Madwa.
- 5.6 The appellant submits that it is a notorious fact and a common practice in Zambia for drivers of trucks to take on private jobs which are outside the course of employment without the knowledge of their employers for their own benefit. It was argued that the respondent did not adduce evidence to rule out this possibility. In fact, no evidence was led by the respondent to the effect that the appellant participated in or authorized the illegal haulage of Mukula tree logs. Therefore, the conclusions made by the court below that the appellant participated or authorized the

illegal haulage is not supported by any evidence on record and ought to be quashed on appeal as per the holding in the case of **Wilson Masautso Zulu v Avondale Housing Project** ⁽⁶⁾.

5.7 There being no evidence of the appellant participating in or authorizing the illegal haulage of the Mukula logs, it was submitted that the appellant qualified to benefit from the protection against forfeiture of the truck provided under **section 31(2) of the Forfeiture of Proceeds of Crime Act** which reads as follows:

(2) Where a person claiming an interest in property to which an application relates satisfies the court that the person-
(a) has an interest in the property; and
(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and-
(i) had the interest before any serious offence occurred; or
(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property;
the court shall order that the interest shall not be affected by the forfeiture order, and the court shall declare the nature and extent of the interest in question.

5.8 In terms of **section 2 of the said Act**, 'interest' in relation to property, means a legal or equitable estate or interest in the

property, or a right, power or privilege in connection to the property. The appellant contends that it satisfied the requirements under section 31(2) by producing a motor vehicle registration certificate dated 27th August, 2014, Layton showing Simwawa as absolute owner of the truck. His interest was acquired four years prior to the haulage of the Mukula logs. The said Layton Simwawa being the infirm grandfather of Martin Singogo, the manager of the appellant.

5.9 It was further contended that there was no evidence showing that the truck was a proceed of a serious offence or criminal offence committed by Layton Simwawa or the appellant business or its management. There was equally no evidence showing that the truck was tainted property at the time of its acquisition or when it was being operated. Consequently, the appellant demonstrated in its affidavit that it had and has a legal interest in the truck or a right, power or privilege in connection with the truck as required by section 31(2) of the Act.

- 5.10 The appellant prayed that the order of forfeiture of the Fuso
- Truck to the State made by the High Court be quashed and that the truck be released to it with costs.

6.0 **RESPONDENT'S ARGUMENTS**

- 6.1 The respondent relied on its heads of argument dated 21st July 2021. The respondent submits on the question of jurisdiction of the trial court, that the court had jurisdiction to hear the application for forfeiture. The definition of the term jurisdiction by the Supreme Court in the case of **Miyanda v The High Court** ⁽⁷⁾ was cited. Further the provisions of section 29, 31 and 33(1) of the **Forfeiture of Proceeds of Crime Act (FPOCA) 2010** were cited. In addition the case of Antonio **Ventriglia and Manuela Sebastian Ventriglia v the people** ⁽⁸⁾ was drawn to our attention in which the Supreme Court stated that proceedings under the FPOCA are civil proceedings. On that basis, the respondent submits that the forfeiture application not being criminal proceedings, the rules of the High Court of Zambia apply. Reference was made to the case of **Chishala Karabasis Nivel and Sharon Mwale v Laston Geoffrey Mwale** ⁽⁹⁾ on commencement of proceedings in the High Court being

anchored on **Rule 6 of the High Court Rules Cap 27 of our Laws** as well as the holding in **Chikuta vs Chipata Rural Council and New Plast Industries v Commissioner of Lands Attorney General**

- 6.2 It was submitted that proceedings under **section 29 of FPOCA** cannot be initiated by way of writ of summons. An application under the above section is an exception and can be dealt with under **section 30 of the High Court Rules** applicable to proceedings in Chamber. Non conviction based forfeiture known as civil forfeiture is a unique remedy. It does not require a conviction or even a criminal charge.
- 6.3 It was contended that under **sections 4, 9, 10, 19 27, and 29 of the FPOCA**, the process of obtaining forfeiture orders is by way of applications by filing papers and are decided on the said papers as opposed to leading evidence. In a nutshell, the respondent submitted that the application was properly before the trial court which had the jurisdiction to hear the matter. The respondent proceeded to distinguish the cited case of **Chikkuta v Chipata Rural Council** which was said to be inapplicable as the facts are different in *casu*. In this matter the

respondent moved the court using a Notice of Motion and not by way of Originating Summons. Further the in the **New Plast case**, the applicant moved the High Court by way of Judicial Review when the **Lands Act** provided for an appeal.

6.4 **Section 30 of the FPOCA** was reproduced in full, which prescribes how the notice of application is given. In order to appreciate the purpose for civil forfeiture, the respondent contends that we take into account the United Nations Conventions against Corruption domesticated by the enactment of FPOCA.

6.5 The respondent argues that though it omitted the word '*originating*' the omission was not fatal as the form was in substantial conformity with **Form H.C Civ of Schedule 1 to the High Court Act**. Further that no prejudice was occasioned to the appellant.

6.6 In response to ground 2, the respondent submits that despite the appellant contending that Mr. Simbeye (driver) acted without authority in ferrying the Mukula tree logs, there was nothing on record to prove the assertion. That evidence from the person who hired the vehicle to ferry sand should have been

provided such as an agreement to that effect and or the receipt for payment for the ferrying the sand. No evidence of instructions given to the driver alluding to being forbidden to carry illegal cargo was shown.

6.7 The respondent also contends that the appellant had not shown sufficient interest in the subject truck, which was not registered in its name to prove ownership and legitimate interest to claim. The white book was registered in Layton Simwawa's name. There was no evidence adduced as to whether the appellant was authorized to use the vehicle or was bequeathed it. We were implored to dismiss the appeal on the basis of the above contentions.

7.0 **DECISION OF THE COURT**

7.1 We have considered the record of appeal and the arguments advanced by counsel. The first ground of appeal challenges the jurisdiction of the lower court to determine the application for non-conviction based forfeiture on the basis that the mode of commencement used by the respondent to move the court was wrong.

7.2 In **New Plast Industries v Commissioner of Lands and Attorney General** ⁽³⁾ cited by the appellant, the Supreme Court guided that:

“It is not entirely correct that the mode of commencement of any action largely depends on the reliefs sought. The correct position is that the mode of commencement of any action is generally provided by the relevant statute.”

Therefore, to determine whether or not the mode of commencement used by the respondent in the court below to obtain the non-conviction based forfeiture order was the right one, there is need to consider the facts and the applicable law.

7.3 The evidence on record as per the affidavit of Inspector Henry Phiri shows that it was not in dispute that the Fuso truck was intercepted during a routine patrol laden with 100 logs of Mukula tree. There was no evidence that the driver had lawful authority to possess or transport the said logs as evidenced by his fleeing the scene. Further, unlawful possession of the said tree or biological resource is an offence in terms of **section 120 of the Environmental Management Act No. 12 of 2011 (EMA)**. The driver of the said Fuso truck remains at large.

7.4 **Section 2 of the FPCA** provides for 'tainted property' which is defined in the following terms:

“tainted property " in relation to a serious offence or a foreign serious offence, means—

(a) any property used in, or in connection with, the commission of the offence;

(b) property intended to be used in, or in connection with, the commission of the offence; or

(c) proceeds of the offence;

and when used without reference to a particular offence means tainted property in relation to a serious offence; and "unlawful activity" means an act or omission that constitutes an offence under any law in force in Zambia or a foreign country.”

7.5 Therefore, as the Fuso truck was used in the commission of the offence to transport the said logs, it became tainted property. It has already been noted above that the driver of the truck fled the scene and remains at large. Therefore, no one was arrested, charged and convicted for the offence of unlawful possession of biological resources contrary to **section 120 of the EMA**. The matter simply remained active.

7.6 **Sections 29, 30 and 31 of the FPCA** provide for forfeiture of tainted property where no one has been convicted. The provisions read as follows:

29. A public prosecutor may apply to a court for an order forfeiting to the State all or any property that is tainted property.

30. Where a public prosecutor applies under section twenty-nine for a forfeiture order—

(a) the public prosecutor shall give not less than thirty days written notice of the application to any person who is known to have an interest in the tainted property in respect of which the application is being made;

(b) any person who claims an interest in the property in respect of which the application is made may appear and produce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the public prosecutor to-

(i) give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property; and

(ii) publish in the Gazette or a daily newspaper of general circulation in Zambia, a notice of the application.

31. (1) Subject to subsection (2), where a public prosecutor applies to the court for an order under this section and the court is satisfied on a balance of probabilities that

the property is tainted property, the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the State.

(2) Where a person claiming an interest in property to which an application relates satisfies the court that the person—

(a) has an interest in the property; and

(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and-

(i) had the interest before any serious offence occurred; or

(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property;

the court shall order that the interest shall not be affected by the forfeiture order, and the court shall declare the nature and extent of the interest in question.

7.7 From the above, it becomes clear that an application can be made to the court for the forfeiture of tainted property where no one has been convicted. Further, an application for forfeiture of tainted property made under **section 29 of the FPCA** must be distinguished from an application made under **section 10 of the Act**.

7.8 An application made under section 10 is one where a person has been convicted of an offence. This means, a trial would have been conducted resulting in a conviction and the consequent application will be made under that criminal matter. However, a reading of section 29, which is a stand-alone provision, shows that the application to be made to the court, is not premised on a conviction. Being a stand-alone provision, it can be inferred that the application is further not premised on any previous or present proceedings, be they civil or criminal.

7.9 The law envisaged situations, such as the present, where a person absconds, and provided for applications for forfeiture of tainted property to be made even where there were no proceedings. Thus, **section 17 of the Act** was provided.

7.10 In this regard, we find that the application for a non-conviction based forfeiture order was properly commenced and brought before the court under **sections 29, 30 and 31 of the FPCA**. As a result, the lower court was clothed with the requisite jurisdiction to hear the application and determine it.

7.11 For these reasons, we find no merit in ground one and it is dismissed.

7.12 In ground three, the appellant challenges the forfeiture order against the company on the basis that its fugitive employee acted outside the course of his employment. It was contended that the appellant satisfied the requirements of an interested party under **section 31(2) of the FPCA** in that it had an interest in the Fuso truck which it acquired without committing any serious offence prior to the commission of the offence by its employee. It was further argued that the employee acted independently and without the knowledge or authorization of the appellant when he decided to ferry the Mukula tree logs.

7.13 In his affidavit in opposition, Roger Simbeye deposed that the Fuso truck belongs to his grandfather, one Laston Simwawa, who is of advanced age (being 80 years) and infirm. He produced a motor vehicle registration certificate to confirm that Laston Simwawa is the absolute owner of the truck. The registration certificate shows that the truck was registered in Laston Simwawa's names on 27th August, 2014. The said truck was being used in the alleged family business by Roger Simbeye who employed the fugitive driver.

7.14 Simbeye objected to the forfeiture order on the basis that he did not permit the driver to carry illegal cargo in the truck. He further stated that his efforts and those of the police to locate the driver have failed. The matter was determined by way of affidavit evidence.

7.15 The standard of proof in determining an application for forfeiture of tainted property where there is no conviction is on a balance of probabilities. See **section 31(1) of the Act**. Further, **section 78 of the FPCA** provides that:

78. 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.

7.16 As regard the onus of proof under section 34 of the Act, the applicant in any proceedings under the Act bears the onus of proving the matters necessary to establish the grounds for making the order.

7.17 The appellant has raised two issues in ground three, one relates to interest in the property and the other to the contention that the driver was not authorized to ferry illegal contra band.

7.18 As regards ownership and registration of the Fuso Truck, the evidence established that the appellant is not the registered owner of the motor vehicle registration number ALV 9176. The appellant contends that the truck was being used in the family business, though it is owned by Layton Simwawa.

7.19 Sufficient interest goes to the standing i.e legal capacity to launch or object to the proceedings so as to challenge the forfeiture decision by the court.

7.20 We are of the view that the appellant has not shown sufficient interest in the property subject of the forfeiture proceedings in lower court. The certificate of ownership adduced in evidence shows that the Fuso truck is owned by Layton Simwawa. There is no evidence of authorization to use the said truck by the owner to the appellant. Aside from mere explanations to the effect that the vehicle belongs to the deponent's Grandfather, no other evidence was adduced to satisfy the court on the issue of sufficient interest. Therefore the court below was on firm ground in holding that the respondent has not shown sufficient interest in the property subject of the proceedings.

7.21 In our view the issue of sufficient interest is the most important issue for consideration. This is because if satisfied, only then can the court order that the interest shall not be affected by the forfeiture order and declare the nature and extent of the interest on question.

7.22 Under section 2 of the FOPC Act, the word interest is defined as ***“ a legal or equitable estate or interest in the property or a right, power or privilege in connection with the property”***

7.23 We are of the view that the appellant did not establish a legal interest as the same resides in Layton Simwawa. Further no equitable interest was proved by the appellant by virtue of an equitable title or claim on equitable grounds such as held by a trust beneficiary. There was no affidavit evidence by the legal owner of the vehicle granting authority to the appellant to use the truck in issue in the alleged family business.

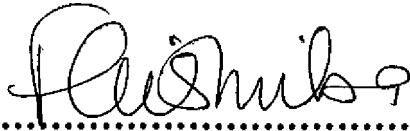
7.24 The appellant contends that interest in the truck was established by Layton Simwawa four years prior to the illegal haulage of the truck.

7.25 The issue is the legal or equitable interest by the appellant Nachanga Transport in the truck subject of the forfeiture order. This is the interest that that was not established. The appellant allege that Layton Simwawa was infirm at the time of filing the affidavit due to ill health, yet no medical report was adduced to that effect or a power of attorney to sue on behalf of the legal owner. It is on the above basis that we find no merit on the issue of alleged established interest in the property forfeited.

7.26 Having failed to prove that the appellant has an interest in the property, it is otiose to proceed and discuss the other criteria under section 31 (2) (b) i.e whether the person did not acquire the interest in the property as a result of any serious offence carried out by the person. In fact it is not in issue that this property was acquired by Simwawa way before the offence subject of forfeiture. The issue not comprehended by the appellant is that it does not have sufficient interest in the property and has failed to satisfy the court that as a claimant, it has an interest in the property owned by Layton Simwawa. For the forgoing reasons, we hold that the appeal has no merit.

We accordingly uphold the decision of the court below and
dismiss the appeal.

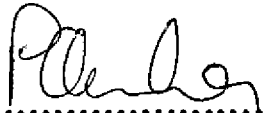
7.27 Costs to the respondent.



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F. M. Chishimba


COURT OF APPEAL JUDGE



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P. C. M. Ngulube

COURT OF APPEAL JUDGE



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M. J. Siavwapa

COURT OF APPEAL JUDGE