

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

2016/HP/077

BETWEEN:

PROSPER KAMANDA

1st PLAINTIFF

LACKSON KAMBANJE

2nd PLAINTIFF

PETER SINGOMA

3rd PLAINTIFF

FELIX MWAPE

4TH PLAINTIFF

AND

LUSAKA CITY COUNCIL

DEFENDANT



**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO,
IN OPEN COURT, ON 15TH DAY OF MARCH, 2022, AT 14:30
HOURS.**

*For the Plaintiff: Mr. W. Mwandila and Mrs C. Chapela –
Messrs. OMM Banda and Company.*

For the Defendant: Ms. J. Mulenga – Messrs. Isaac and Partners.

JUDGMENT

CASES REFERRED TO:

1. *Ndola City Council v William Kasonso* – S.C.Z No 13 of 1997;
2. *Zambia Railways Limited v Pauline S Mundia, Brian Sialumba* (2008) Vol. 1, Z.R. 287 (S.C);
3. *Philip Mhango v Dorothy Ngulube* (1983) Z.R. 61; and
4. *J.Z. Car Hire Limited v Malvin Chala* (2002) Z.R. 112.

LEGISLATION REFERRED TO:

1. *The Market and Bus Station Act No. 7 of 2007;*

2. *The Town and Country Planning Act, Chapter 283, Volume... of the Laws of Zambia;*
and
3. *The Local Government Act No.2 of 2019.*

OTHER WORKS REFERRED TO:

1. *Phipson on Evidence, Seventeenth Edition, (Thomson Reuters (Legal) Limited 2010.*

1 INTRODUCTION

1.1 This Judgment is in respect of properties seized by the Lusaka City Council Police from the Plaintiffs' containers. The Plaintiffs allege that the Police from Lusaka City Council, the Defendant herein, unlawfully entered their containers and seized assorted goods.

2 BACKGROUND

2.1 The background to this matter as gleaned from the Pleadings is that in 2014, the Plaintiffs were issued with offer letters to trade around Lusaka City Market area by the Defendant and subsequently, allocated trading areas to set containers for their various businesses.

2.2 Sometime in 2016, the Defendant broke into the Plaintiffs' containers around 02:00 hours and seized assorted goods and containers. Incensed with the Defendant's action, the Plaintiffs launched this action.

3 PLEADINGS

3.1 The Plaintiffs issued a Writ of Summons dated 19th January, 2016, against the Defendant with claims for the following reliefs: -

- i. *An order for restitution or properties belonging to the Plaintiffs unlawfully seized by the Defendant;*
- ii. *In the alternative the equivalent value of the properties belonging to the Plaintiffs;*
- iii. *Damages for unlawful seizure of goods;*
- iv. *Other incidental costs associated with the transaction herein;*
- v. *Any other relief that the court may deem fit; and*
- vi. *Costs of the and incidental to these proceedings.*

3.2 By the Plaintiffs' Statement of Claim filed on 19th January, 2016, the Plaintiffs averred *inter alia* that on 27th April, 2014, the Plaintiffs were issued with offer letters to trade around Lusaka City Market area and were subsequently allocated trading areas to set up containers for various businesses. On 14th January, 2016, around 02:00 hours, the Defendant using its agents, the City Council Police, unlawfully broke into the Plaintiffs' containers and seized goods and merchandise.

3.3 The 1st Plaintiff averred that the Defendant's agent seized 1 upright fridge, 1 deep freezer, Airtime worth K4,000.00, 90kg rice, 1 industrial food warmer worth K23,000.00, assorted groceries worth K400,000.00 and his container worth K150,000.00 was uprooted.

- 3.4 The 2nd Plaintiff averred that the Defendant's agents broke into his container and seized assorted goods worth K330,000.00 and K19,000.00 cash.
- 3.5 The 3rd Plaintiff averred that the Defendant's agents seized groceries worth K700,000.00 and uprooted his container worth K45,000.00.
- 3.6 The 4th Plaintiff averred that the Defendant's agents seized 50 bags of cement valued at K58.00 each and uprooted his container worth K55,000.00.
- 3.7 It was averred by the Plaintiffs that the Defendant did not give any reason for its actions and have been unlawfully holding on to the Plaintiffs' property. As a consequence of the foregoing, the Plaintiffs have been inconvenienced and have suffered financial loss and damages.
- 3.8 By the Defendant's Defence filed on 20th December, 2016, the Defendant denied that it unlawfully broke into the 1st and 2nd Plaintiffs' containers, seized their goods and uprooted the 1st Plaintiff's container. The Defendant further averred that it did not unlawfully break into the 3rd and 4th Plaintiffs' containers and seize the alleged goods. It is averred that the Defendant acted within the powers conferred on it by law.
- 3.9 The Defendant denied the Plaintiffs' claim for an order of restitution of properties or an alternative order for the equivalent of the value of the seized goods in totality and

averred that the actions by the Defendant were in exercise of its statutory powers.

3.10 By the Plaintiffs' Reply filed on 29th December, 2016, the Plaintiffs averred that the Defendant had admitted to breaking into the Plaintiffs' containers and seized goods. The Plaintiffs further averred that that the Defendant's actions led to the Plaintiffs' loss of business, customers, an act of criminal trespass and a violation of the Plaintiffs' human rights. The Plaintiffs stated that the Defendant's defence lacked merit and its actions were irregular and unlawful as it breached the provisions of Article 1 and Article 2 of the Constitution of Zambia which condemns the deprivation of property. The Plaintiffs also asserted that the Defendant had no legal document and did not serve any notice on the Plaintiffs.

4 EVIDENCE AT TRIAL

4.1 **PW1** was **Peter Singoma**, the 3rd Plaintiff herein, who is a Business Man by profession. He testified *inter alia* that his goods and merchandise were seized when his container was uprooted from his trading space at Lusaka City Market by the Defendant. He recalled that in the years 2014 and 2015, he and the other Plaintiffs had applied for trading spaces from Defendant's management to put up containers at Lusaka City market and to start trading. The Plaintiffs' applications were successful and they were each given offer letters. He produced 3 copies of the letters of offer issued by the

Defendant in the names of the 1st Plaintiff, the 2nd Plaintiff and 3rd Plaintiff, which are contained on pages 1 to 3 of the Plaintiffs' Bundle of Documents.

4.2 It was PW1's testimony that the Plaintiffs met all the conditions in the offer letter which included the payment of K300.00 being monthly market levy. PW1 referred to pages 8 to 19 of the Plaintiffs' Bundle of Documents consisting of various receipts issued by the Defendant for the sums of K450.00 and K600.00. He stated that the reason why the receipts did not reflect K300.00 but K450.00 was because the Plaintiffs also paid the sum of K150.00 each for electricity supplied to their containers.

4.3 PW1 stated that they were allocated trading spaces outside the market building but within the vicinity of Lusaka City market. The Plaintiffs dealt in various merchandise without problems. He further stated that according to the container numbers indicated on each receipt, C11 was for the 1st Plaintiff, C09 for the 2nd Plaintiff, C10 for the 3rd Plaintiff and C12 for the 4th Plaintiff.

4.4 It was PW1's testimony that the Plaintiffs' merchandise were as follows: -

4.4.1 The 1st Plaintiff dealt in grocery retail sales, airtime of all networks and fast foods. The airtime was valued at K4,000.00 and the grocery and other goods were valued at K400,000.00.

4.4.2 The 2nd Plaintiff was dealing in boutique and assorted goods such as travelling bags, laptop bags and school bags all valued at K349,000.00, which included cash in the sum of K19,000.00.

4.4.3 The 3rd Plaintiff, was selling groceries valued at K115,000.00, which sum included the value of the container.

4.4.4 The 4th Plaintiff was dealing in cement retail sales valued at K57,900.00, which sum included the value of the container.

4.5 It was PW1's further testimony that he did not have an inventory of the goods that were taken by the Defendant and that the receipts and book of accounts were all confiscated during the raid. PW1 stated that the receipts, trading licenses and original offer letters were all in the containers that the Defendant's broke and seized. The containers were uprooted and taken to an unknown destination. Further, PW1 stated that as the 2nd Plaintiff's container was not uprooted from the trading space, the 2nd Plaintiff's receipts were retrieved and the Plaintiffs were able to file copies of the receipts before Court.

4.6 PW1 referred to pages 20 to 21 of the Plaintiffs' Bundle of Documents and stated that the images on those pages showed the 2nd Plaintiff's container that was damaged by the Defendant's agents, from which the sum of K19,000.00 and merchandise were taken.

- 4.7 PW1 went on to state that the Defendant's agents on 14th January, 2016, had gone to Lusaka City Market at around 02:00 hours and that the Plaintiffs were told by their employees at around 06:00 hours that their goods had been damaged. PW1 found out from the Paramilitary Officer manning the market that the Defendant's agents went to their shops at around 02:00 hours and uprooted their containers from the trading spaces. PW1 also confirmed from the Market Manager who told the Plaintiffs that it was the Defendant's employees who had caused the damage and that they were instructed to do so by the Town Clerk, Mr. Alex Mwansa.
- 4.8 The Plaintiffs lodged a complaint to the Police against the Defendant but they were not assisted. The Plaintiffs proceeded to see the Town Clerk at the Civic Centre along Independence Avenue, to determine where their containers and goods had been taken to but were not attended to by the Town Clerk.
- 4.9 PW1 testified that on the date of the seizure and demolition of the containers, all the Plaintiffs' offer letters were still valid subject to renewal. He further stated that there was no notice or Court order from Defendant of its intention to seize the Plaintiffs' merchandise and uproot the containers. PW1 stated that the 2nd Plaintiff had renewed his offer letter and that was why his container was not uprooted.

4.10 During cross examination, PW1 stated that he had not produced any seizure notice. He further stated that he had indicated the value of the merchandise that was seized but that he had no proof before Court to demonstrate the value of the goods seized.

4.11 In Re-examination, PW1 stated that he did not show proof of the value of the merchandise seized because all the merchandise, containers and day to day records were taken by the Defendant.

4.12 **PW2** was **Magnolia Kabalika**, aged 26 and residing in Kanyama. She testified *inter alia* that she worked for the 1st Plaintiff in January, 2016. When she went to work in 2016 on a date she could not recall, she found that there was nothing in the container where she worked. PW2 decided to inform her boss, the 1st Plaintiff and he arrived at the scene. PW2 was then requested to go home and her boss proceeded inside the market to the Defendant's market office.

4.13 PW2 stated that the 1st Plaintiff was selling assorted items which included assorted soft drinks, rice, cream doughnuts and each day she would make the sum of K6,000.00 in sales on average. She recalled that the 1st Plaintiff stocked airtime valued at about K4,000.00 but could not recall the amount of airtime that was left in the container at the time that the Defendant seized the goods.

4.14 There being no cross examination, the Plaintiffs closed their case.

4.15 On the Defendant's failure to call witnesses, despite being given ample notice of the date of trial, the Defendant's case was deemed closed.

5 SUBMISSIONS

5.1 By the Plaintiffs' submissions filed on 28th June, 2021, the Plaintiffs submitted that there were two legal issues for determination as follows: -

- 1. Whether the Plaintiffs were operating their business within the confines of the law; and*
- 2. Whether the Defendant's action of demolishing and confiscating/seizing the Plaintiffs' goods was lawful.*

5.2 In addressing the first issue, the Plaintiffs' Counsel submitted that the Plaintiffs were trading legally and within the confines of the law as they were issued with offer letters, following their application for trading licenses and their subsequent compliance with the conditions of offer by paying the monthly market levy of K300.00.

5.3 Counsel cited **Section 9 (1) (2)** of **The Market and Bus Station Act**¹ and submitted that the said provision is very clear that in the event that any licence holder fails or neglects to pay the necessary market levy, such

person commits an offence and is liable, upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding six months or to both. Counsel contended that the Defendant had failed to prove that the Plaintiffs herein had breached the said conditions contained in the offer letters or any of the provisions of the aforementioned Act. Counsel further contended that even in the event that the said conditions were breached, the only recourse available to the Defendant was limited to instituting criminal proceedings as against the Plaintiffs as opposed to compulsorily acquiring or confiscating their containers and all their merchandise. It is on the basis of the foregoing that Counsel submitted that the Defendant herein acted with impunity by confiscating the Plaintiffs goods, which goods are still in the possession of the Defendant without any backing of the law.

- 5.4 Turning to the second legal issue, Counsel submitted that he was aware that the Defendant had prerogative powers to demolish illegal structures and that in the event that the Plaintiffs had erected illegal structures, an enforcement notice of 28 days should have been served on the Plaintiffs as a matter of law as required under **Section 31 of *The Town and Country Planning Act*²**.

5.5 To fortify his submission, Counsel cited the case of ***Ndola City Council v William Kasonso***¹ as follows: -

“Where a City Council’s by-laws require that a person who erects a building without obtaining a permit must be notified that the building may be demolished if he fails to do so himself within a specific period and the council to notify the person of the period in which the building must be demolished and the fact that the Council may demolish it, a Council will be acting in contravention of its own by-laws if it demolished the building and will be liable for damages to the owner of the building.”

5.6 Counsel went on to cite **Section 8 of *The Market and Bus Station Act***¹ and on the strength of this authority, it was submitted that as the Defendant herein did not issue the Plaintiffs any notice, it follows that the Defendant abrogated the law by demolishing and seizing the Plaintiffs trading containers. Counsel further submitted that the question to be resolved is “*Which law did the Defendant invoke to demolish and seize the Plaintiffs’ trading containers and goods/merchandise?*”. Finally, it was submitted that the Defendant did not act lawfully but on their own accord without any legal backing whatsoever.

5.7 The Defendant did not file its submissions despite being given sufficient opportunity to do so.

6 DECISION OF THE COURT

- 6.1 I have considered the pleadings, evidence before me, as well as the Plaintiffs' final submissions. I have also considered the authorities cited by Counsel for the Plaintiffs, for which I am grateful.
- 6.2 The Plaintiffs claim *inter alia* for an Order of Restitution of their goods seized by the Defendant, in the alternative, the Plaintiffs' claim is for the equivalent of the properties belonging to the Plaintiffs, damages for unlawful seizure of goods, costs and any other reliefs that this Court deems fit.
- 6.3 It is settled law that a person who commences a civil action must prove his case against the Defendant in order to succeed in his claim. To that effect, the learned authors of ***Phipson on Evidence***¹, in paragraph 6-06, at page 151, state the following regarding the burden of proof in civil cases: -

"So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issue. If, when the evidence is adduced by all parties, the party who has the burden has not discharged it, the decision must be against him."

- 6.4 Additionally, the standard to which a Plaintiff should prove his case was discussed by the Supreme Court in ***Zambia Railways Limited v Pauline S Mundia, Brian Sialumba***² where it was held as follows: -

“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable...”

- 6.5 It is not in dispute that all the Plaintiffs were issued with offer letters by the Defendant through its Market Managers to trade around Lusaka City Market. It is also not in dispute that on 14th January, 2016, around 02:00 hours, the Defendant’s agents seized assorted goods from the 3rd and 4th Plaintiffs and uprooted their containers. The Plaintiffs, however all claim that the Defendant seized goods from each of their containers, uprooted the 1st, 3rd and 4th Plaintiffs’ containers and damaged the 2nd Plaintiff’s container. The Plaintiffs are therefore seeking an order of restitution of their goods or alternatively the equivalent value of their goods from the Defendant.
- 6.6 The Defendant by its Defence, admits that it seized the goods of the 3rd and 4th Plaintiffs and uprooted their containers but argued that it did so in exercise of its statutory powers. The Defendant further denied that it seized the 1st and 2nd Plaintiffs’ goods and uprooted the 1st Plaintiff’s container and damaged the 2nd Plaintiff’s container. On my analysis of the evidence before me, I

find that the legal issues for determination are as follows: -

1. Whether the 1st and 2nd Plaintiffs have proved that the Defendant seized their goods and uprooted the 1st Plaintiff's and damaged 2nd Plaintiff's containers;
2. Whether the Defendant had lawful justification for the seizure of the Plaintiff's goods, uprooting and causing damage to the Plaintiffs' containers;
3. Whether the Plaintiffs have established the value of the goods seized by the Defendant and the containers as set out in their Statement of Claim; and
4. Whether the Plaintiffs are entitled to Damages for the unlawful seizure of goods.

6.7 I will proceed to consider the issues for determination in the order that I have identified them above, starting with whether or not the 1st and 2nd Plaintiffs have proved that the Defendant seized their goods and uprooted the 1st Plaintiff's container and damaged the 2nd Plaintiff's container.

6.8 I will begin by considering the 1st Plaintiff's allegations. According to the testimony of PW1, on 14th January, 2014, the Defendant's agents seized all the goods in the container belonging to the 1st Plaintiff and uprooted the container. Further, PW2 who was an employee of the

1st Plaintiff, testified that when she reported for work on 14th January, 2016, she found that the container that she had been working from had been uprooted and the goods seized. At trial, the foregoing testimonies were not challenged by the Defendant's Counsel in any way.

6.9 On my analysis of the foregoing and my observation of PW1 and PW2's demeanours during their testimonies, I am satisfied that the 1st Plaintiff has proved on a balance of probability that the Defendant seized his goods and uprooted his container.

6.10 I now turn to consider whether the 2nd Plaintiff has proved that the Defendant seized his goods and caused damage to his container. At trial, PW1 testified that the 2nd Plaintiff's container was not uprooted, but that the Defendant cut part of the door with a steel grinder and the Defendant got away with the sum of K19,000.00 cash and seized merchandise from the container. PW1 produced pictures on pages 20 to 21 of the Plaintiffs' Bundle of Documents depicting pictures of an empty blue container that had been cut into. PW1 stated that the said pictures were of the 2nd Plaintiff's container. The foregoing testimony of PW1 was not challenged by the Defendant's Counsel during cross examination.

6.11 On my analysis of the foregoing evidence and my observation of the PW1's demeanour at trial, I find that as at trial the Defendant did not challenge PW1's evidence in support of the allegation that the Defendant

seized the 2nd Plaintiff's goods and damaged his container, the 2nd Plaintiff has proved on a balance of probability that it was the Defendant who seized his goods and damaged his container.

6.12 I shall now proceed to determine the second legal issue of whether the Defendant had lawful justification for the seizure of the Plaintiffs' goods and uprooting of 1st, 3rd and 4th Plaintiffs' containers and causing damage to the 2nd Plaintiff's container. Before, I proceed to consider this issue, I will begin by considering whether the Plaintiffs have proved that they were legally entitled to occupy the trading areas in issue.

6.13 At trial, PW1 testified that on 14th of January, 2016, when the Defendant seized the Plaintiffs' goods and uprooted their containers, all the Plaintiffs were holders of valid offer letters issued to them by the Market Manager. PW1 produced copies of the 1st, 2nd and 3rd Plaintiffs' offer letters exhibited on pages 1 to 6 of the Plaintiffs' Bundle of Documents as follows: -

6.13.1 The 1st Plaintiff was issued an offer letter on 18th February, 2015;

6.13.2 The 2nd Plaintiff was issued an offer letter on 27th April, 2014, which offer was renewed on 27th April, 2015, for a further one-year period.

6.13.3 The 3rd Plaintiff was issued an offer letter in May, 2014, which offer was renewed in May, 2015, for a further one-year period.

6.14 From the foregoing, it is clear that by the 14th day of January, 2016, the 1st, 2nd and 3rd Plaintiffs' offer letters were still valid on 14th January, 2020, when the Defendant seized the Plaintiffs' goods and uprooted the 1st, 2nd and 3rd Plaintiffs' containers.

6.15 I note that PW1 did not produce a copy of the 4th Plaintiff's offer letter. However, I am of the view that as the Defendant by its Defence admitted that all the Plaintiffs, which included the 4th Plaintiff, were issued with offer letters and the fact that there was no challenge by the Defendant's Counsel of PW1's testimony that all the Plaintiffs' offer letters were still valid on the date of the seizure and demolition of the containers, I find that the Plaintiffs all had valid offer letters on the date of the seizure of their goods and demolition of the 1st, 3rd and 4th Plaintiffs' containers and the damage to the 2nd Plaintiff's container.

6.16 I now turn to consider whether the Plaintiffs met the conditions of the offer letter, which included payment of a monthly charge to the Defendant, for the use of the trading space. On my analysis of the evidence on record, I find that PW1 only produced copies of the 2nd Plaintiff's receipts as proof of payment of the required monthly charge and not of the other Plaintiffs. The

6.13.3 The 3rd Plaintiff was issued an offer letter in May, 2014, which offer was renewed in May, 2015, for a further one-year period.

6.14 From the foregoing, it is clear that by the 14th day of January, 2016, the 1st, 2nd and 3rd Plaintiffs' offer letters were still valid on 14th January, 2020, when the Defendant seized the Plaintiffs' goods and uprooted the 1st, 2nd and 3rd Plaintiffs' containers.

6.15 I note that PW1 did not produce a copy of the 4th Plaintiff's offer letter. However, I am of the view that as the Defendant by its Defence admitted that all the Plaintiffs, which included the 4th Plaintiff, were issued with offer letters and the fact that there was no challenge by the Defendant's Counsel of PW1's testimony that all the Plaintiffs' offer letters were still valid on the date of the seizure and demolition of the containers, I find that the Plaintiffs all had valid offer letters on the date of the seizure of their goods and demolition of the 1st, 3rd and 4th Plaintiffs' containers and the damage to the 2nd Plaintiff's container.

6.16 I now turn to consider whether the Plaintiffs met the conditions of the offer letter, which included payment of a monthly charge to the Defendant, for the use of the trading space. On my analysis of the evidence on record, I find that PW1 only produced copies of the 2nd Plaintiff's receipts as proof of payment of the required monthly charge and not of the other Plaintiffs. The

6.18 With regard to the Defendant's authority to demolish structures, **Regulation 5 (j)** under the First Schedule to **The Local Government Act**³, provides as follows: -

"A local authority shall, in relation to community development;

j) Control the demolition and removal of buildings and to require the altering demolition and removal of buildings which-

(i) do not conform to plans and specifications in respect thereof approved by the council; and or

(ii) are a danger to public health or public safety."

6.19 From the foregoing, it is clear that the Defendant being a local authority, is conferred with the authority to control the demolition of buildings. The said provision also sets out the instances within which the said authority can be exercised. However, on my analysis of the Defendant's defence, I find that the Defendant did not allude to any of the foregoing instances as the basis for the demolition of the Plaintiffs' containers. Additionally, I find that during the cross examination of PW1 and PW2 by the Defendant's Counsel, Counsel did not allude to any particular provision of the law that the Plaintiffs may have breached which would warrant the seizure of goods and demolition of the 1st, 3rd and 4th Plaintiffs' containers and damage to the 2nd Plaintiff's container.

6.20 Turning to the issue of notice, **Section 8 of *The Market and Bus Station Act***¹ provides as follows regarding the exercise of the Defendant's authority to demolish a market: -

“(1) A local authority, in consultation with the Minister, may demolish, reconstruct, abolish, close or move a market or a bus station.

(2) Notwithstanding subsection (1), a local authority shall, before demolishing, reconstructing, abolishing, closing or moving a market or bus station, notify, in writing, any person who is managing the market or bus station.” (Court's Emphasis)

6.21 The import of the foregoing provision, in my view, is that a person managing a market ought to be given notice of a local authority's intention to demolish a market. The essence of issuing a notice to a person managing a market in my view, is to give an opportunity for the Market Manager to inform the parties that may be affected by the demolition of the market so that they may have ample time to seek alternative markets or secure their goods. In this case, the unchallenged testimony of PW1 is that the Defendant did not issue a notice to inform them of its intention to confiscate their goods and to demolish the 1st, 3rd and 4th Plaintiffs containers and damage the 2nd Plaintiff's container. PW1's evidence is further supported by his unchallenged testimony that the confiscation of the

Plaintiffs' goods and demolition of the 1st, 3rd and 4th Plaintiff's containers and damage to the 2nd Plaintiff's container was done at around 02:00 hours, in the morning of 14th January, 2016, which in my view, is an indication that the Defendant planned to take action in the absence of the Plaintiffs and therefore did not intend to issue notice, in contravention of the foregoing provision.

6.22 Based on my findings above, I find that the Plaintiffs have proved on a balance of probability that the Defendant had no legal justification for the confiscation of the Plaintiffs' goods and demolition and damage to their containers, which actions were therefore illegal. It follows therefore, that all the Plaintiffs are entitled to an order of restitution of the goods confiscated and the 1st, 3rd and 4th Plaintiffs are entitled to a replacement of their containers. The 2nd Defendant is also entitled to the reparation of the container which was damaged as depicted in the Plaintiffs' Bundle of Documents.

6.23 Due to the lapse of time between the concurrence of incident complained of and the determination of this matter, I am of the view that the Defendant may not be in the position to return the goods confiscated, replace the demolished containers and repair the 2nd Plaintiff's container. Therefore, based on the Plaintiffs' alternative claim, I order the restitution by the Defendant of the equivalent monetary value of the goods confiscated, the

value of the 1st, 3rd and 4th Plaintiffs' containers and the value of the cost of repairing the damage to the 2nd Plaintiff's container.

6.24 I note that at trial, PW1 gave an estimated value of the goods confiscated by the Defendants and the estimated value of the containers as follows: -

1. ***The 1st Plaintiff*** – *dealt in grocery retail sales, airtime of all networks, and fast foods. The airtime was valued at K4,000.00 and the grocery and other goods were valued at K400,000.00;*
2. ***The 2nd Plaintiff*** – *dealt in boutique and assorted goods such as travelling bags, laptop bags and school bags all valued at K349,000.00, which included cash in the sum of K19,000;*
3. ***The 3rd Plaintiff*** – *dealt in groceries valued at K115,000.00, which sum included the container; and*
4. ***The 4th Plaintiff*** – *dealt in cement retail sales valued at K57,900.00, which sum included the value of the container.*

6.25 On my analysis of the evidence on record, I find that both PW1 and PW2 did not produce any documentary evidence to establish or confirm the estimations of the value of the confiscated goods, demolished containers and the cost of repairing the 2nd Plaintiff's container. In the case of ***Philip Mhango v Dorothy Ngulube***³, the

Supreme Court stated as follows relating to proof of special damages: -

“It of course for any party claiming a special loss to prove that loss to do so with evidence which makes it possible for the court to determine the value of that loss with a fair amount of certainty.”

6.26 Based on the foregoing authority, I find that the Plaintiffs have failed to prove the value of the confiscated goods, the demolished container and the cost of repairing the 2nd Plaintiff's container to a fair amount of convincing clarity. However, as the Plaintiffs have proved that their goods were confiscated by the Defendant; that the 1st, 3rd and 4th Plaintiffs containers were demolished; and that the 2nd Plaintiff's container was damaged, I order that the value of the Plaintiffs' losses be assessed and determined by the Deputy Registrar. The amount determined for each of the Plaintiffs shall carry interest at the short term deposit rate from the date of the cause of action to Judgment and thereafter, at the current bank rate until full settlement.

6.27 I now turn to consider the fourth legal issue outlined above of whether the Plaintiffs have proved that they are entitled to damages for the Defendant's unlawful seizure of their goods. In the case of **J.Z. Car Hire Limited v Malvin Chala and another**⁴, it was held as follows: -

Supreme Court stated as follows relating to proof of special damages: -

“It of course for any party claiming a special loss to prove that loss to do so with evidence which makes it possible for the court to determine the value of that loss with a fair amount of certainty.”

6.26 Based on the foregoing authority, I find that the Plaintiffs have failed to prove the value of the confiscated goods, the demolished container and the cost of repairing the 2nd Plaintiff's container to a fair amount of convincing clarity. However, as the Plaintiffs have proved that their goods were confiscated by the Defendant; that the 1st, 3rd and 4th Plaintiffs containers were demolished; and that the 2nd Plaintiff's container was damaged, I order that the value of the Plaintiffs' losses be assessed and determined by the Deputy Registrar. The amount determined for each of the Plaintiffs shall carry interest at the short term deposit rate from the date of the cause of action to Judgment and thereafter, at the current bank rate until full settlement.

6.27 I now turn to consider the fourth legal issue outlined above of whether the Plaintiffs have proved that they are entitled to damages for the Defendant's unlawful seizure of their goods. In the case of **J.Z. Car Hire Limited v Malvin Chala and another**⁴, it was held as follows: -

interest at the short term deposit rate from the date of the cause of action to Judgment and thereafter, at the current bank rate until full settlement.

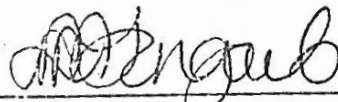
7.2 The Plaintiffs have failed to prove on a balance of probabilities that they are entitled to an order for damages for the unlawful seizure of goods, accordingly, the claim is dismissed.

7.3 Costs are awarded to the Plaintiffs to be taxed in default of agreement.

7.4 Leave to appeal is granted.

SIGNED, SEALED AND DELIVERED AT LUSAKA, THIS

15TH DAY OF MARCH, 2022.



**P. K. YANGAILO
HIGH COURT JUDGE**