

IN THE HIGH COURT OF ZAMBIA
AT THE LUSAKA DISTRICT REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2017/HP/2072



BETWEEN:

RONBEAT INVESTMENTS
ALPHA COMMODITIES LTD

1ST PLAINTIFF
2ND PLAINTIFF

AND

NYIOMBO INVESTMENT LTD *(In Receivership)*
ATTORNEY GENERAL
DAVID KATEPA *(Sued in his personal capacity*
as Receiver of Nyiombo Investments)

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT

Before the Hon. Mr. Justice T.I. Katanekwa

For the Plaintiff: Mr. L. Sianondo – Alpha Commodities, Mr. K. Zimba of Messrs Musha & Co. (Ronbeat Investments)

For the Defendants: For the 1st & 3rd Def. Mr. N. Muyatwa of Messrs KBF & Partners, for the 2nd Def. Ms. K. Chongo Asst. Snr. Advocate.

J U D G M E N T

Legislation and other work referred to:

- 1. Clerk & Lindsell on Torts***

Cases Referred To:

- 1. Kapanza Mwansa Vs. Zambia Breweries.***

By writ of summons filed into the Court on 9th October, 2017, Ronbeat Investments and Alpha Commodities Limited, herein after called the Plaintiffs claimed the following: -

- (i) An order and declaration that the acts of the 2nd and 3rd Defendants were unlawful.**
- (ii) General damages.**
- (iii) Damages for the breach of duty of care.**
- (iv) Damages of the loss of business.**
- (v) For an account by each to the claimant for the fertilizer.**
- (vi) If unable to account for the fertilizer, damages for the value of 30434 by 50 bags of Urea fertilizer and 396 bags by 50 compound D together with profit which would have been made.**
- (vii) Loss of business against the 2nd Defendant for the loss of sales during the closure of depots.**
- (viii) Any other relief the court may deem fit.**
- (ix) Interest.**
- (x) Costs.**

In the accompanying statement of claim after consolidation order, the Plaintiffs state in the material part that: -

1. The 2nd Plaintiff is and was at all material times a private limited company duly constituted as such under the Companies Act No. 10 of 2017.
2. The 1st Defendant is a company in receivership under 3rd Defendant.
3. The 2nd Defendant is sued pursuant to the State Proceedings Act Chapter 71 of the Laws of Zambia.

4. The 3rd Defendant is a male adult of full age and a receiver of the 1st Defendant and more so liable to be sued in his personal capacity.
5. The 2nd Plaintiff conducts businesses in the purchase and selling of Agriculture commodities and various warehouses country wide and maintaining its access to its markets.
6. The police, who are the officers of the 2nd Defendant assumed possession of the Plaintiff's depots in numerous areas which include, Kasama, Nchelenge, Mpika and Ndola.
7. The taking of the possession of the Plaintiffs depots happened as follows: -
 - i. ***On 28th September, 2018, the police took possession of the Ndola depot situate on Plot No. 917A, Kapombo Road and deployed its officers to guard the premises and prevented the 2nd Plaintiff from accessing the same.***
 - ii. ***On 4th December, 2018 the Police took possession of the Mpika depots and only permitted normal operations on 8th December, 2018.***
 - iii. ***The Nchelenge depot was locked around 08:00 hours upon opening for business on 7th December, 2018 and only opened for normal operations at 16:00 hours the same day.***
 - iv. ***The police took possession of Kasama depots on 1st December, 2018 at 08:30 hours and only re-opened the depots on 14th December, 2018.***
8. All the other depots were opened except the Ndola located at Plot No. 917A, Kabombo Road which remained closed and in possession of the police. To date, it has not been handed over to the 2nd Plaintiff.

9. Attempts were made on numerous occasions to have the 2nd Defendant surrender the keys to the Ndola depot. The response received from the police was to the effect that the keys were surrendered to the Receiver/Manager of the 1st Defendant who happens to be the 3rd Defendant.
10. Thereafter, the 2nd and 3rd Defendants wrongfully and with consequence of injury to the 2nd Plaintiff and/or causing loss by unlawful means conspired and combined together to facilitate the loading of fertilizer on the trucks out of the 2nd Plaintiff and against the express protestation of the Plaintiff.
11. The Plaintiff through a letter dated 17th December, 2018 did write complaining over the theft of fertilizer from the warehouse.
12. The 2nd Defendant, through the police, did respond on 5th February, 2019 wherein it was accepted among other things, that they were in possession of the keys together with the 3rd Defendant.
13. In their capacities as custodians of the 2nd Plaintiff's fertilizer, the 2nd and 3rd Defendant and each of them owed the 2nd Plaintiff the duties.
 - i. ***A duty to act in good faith and in the best interest of the 2nd Plaintiff.***
 - ii. ***The duty not to take fertilizer out of the depot without due regard to interest of the 2nd Plaintiff.***
 - iii. ***A duty not to release the keys to any other party without the consent of the 2nd Plaintiff.***
 - iv. ***A duty not to permit or causing to permit the taking of the fertilizer from the warehouse.***

14. Further or alternatively the 2nd and 3rd Defendants, their servants or agents who had control and power of such of the 2nd Plaintiff's assets and property as were in their possession or control were negligent and/or breach of duty of care.

PARTICULARS OF NEGLIGENCE

- a. Failing to provide and/or maintain the warehouse in the manner it was at the time of taking possession.*
- b. Handing over the keys by the 2nd Defendant to the 3rd Defendant when they knew or ought to have known that the warehouse was for the 2nd Plaintiff and fertilizer therein.*
- c. Failing to provide any or any adequate system whereby the depot and fertilizer would be safe, shut locked and secured.*
- d. Failing to hand over the keys to the 2nd Defendant.*
- e. Failing to take any measures or adequate measure to protect the interest of the 2nd Plaintiff.*

15. As the result of the matters set out above, the 2nd Plaintiff has suffered loss and damages.

16. By reasons of the damages and injury and by reason of the unlawful means as pleaded above, the 2nd Plaintiff claims as follows: -

- a. An order and declaration that the acts of the 2nd and 3rd Defendants were unlawful.*
- b. General damages.*
- c. Damages for the breach of duty of care.*
- d. Damages for the loss of business.*
- e. For an account by each to the Claimant for the fertilizer.*

- f. If unable to account for the fertilizer, damages for the value of 30434 by 50 bags of Urea fertilizer and 396 bags x 50 of compound D together with profit which would have been made.***
- g. Loss of business against the 2nd Defendant for the loss of sales during the closure of the depots.***
- h. Any other relief the court may deem fit.***
- i. Interest***
- j. Costs.***

That for its part the 1st and 3rd Defendants filed in a defence and counterclaim, wherein they stated the following in the material part.

1. Paragraph 1 of the statement of claim is within the peculiar knowledge of the 2nd Defendant.
2. Paragraph 2 and 3 of is not disputed.
3. Paragraph 4 is disputed to the extent that the 3rd Defendant is and was at all material time a Receiver and Manager without personal liability for the 1st Defendant.
4. Paragraph 5 is within the peculiar knowledge of the 2nd Plaintiff.
5. Paragraph 6 is not disputed save to ass that the 1st Defendant lodged a complaint with the Zambia Police against the 2nd Plaintiff, for the offence of theft of its stock of fertilizer, and the police assumed possession of the 2nd Plaintiffs depots at Kasama, Nchelenge, Mpika and Ndola upon finding evidence that established the said theft during their investigations.
6. It was discovered during the investigations afore-stated that the 2nd Plaintiff was repackaging sacks of fertilizer from the 1st Defendant GRZ marked 50kg bags which they got through a

Debt Swap Agreement signed with the Ministry of Agriculture on 26th September, 2017.

7. In fact, the police Joint Investigations team discovered at the 2nd Plaintiff's warehouse at plot no. 917A, Kabompo Road, Ndola, stacks of 50kgs bags of fertilizer labelled GRZ and Nyiombo Investment Zambia.
8. Paragraph 7 is not disputed.
9. Paragraph 8 is not disputed save to add that the police investigations in relation to theft of the 1st Defendant's stock of fertilizer by the 2nd Plaintiff is still active and the Police took possession of warehouse at Plot No. 917A, Kabompo Road, Ndola when they discovered evidence amongst other things, of repackaging 50kg bags of fertilizer labelled GRZ and Nyiombo Investment Zambia.
10. Paragraph 9 is not disputed.
11. The Zambia police handed over the keys to the warehouse to Mr. Kofi Agyen Frempong, and agent appointed by the 1st Defendant to keep watch of the warehouse and the stock together with the officers for the Zambia Police Service.
12. The keys were handed over by the police upon realizing that they had neglected to issue seizure notices and further because they had established that the fertilizer that was in the warehouse belonged to the 1st defendant and all of the officers from the 2ND Plaintiff were elusive.
13. Paragraph 10 is disputed in its entirety and the 1st Defendant shall aver that on 30th October, 2018, Mr. Ronald Nsokoshi, the

24. As far as is known to the 1st Defendant, Plot No. 917a, Kabompo Road, Ndola was at all material times under guard of the Zambia Police and Mr. Kofi Agyen Frempong kept watch of the said warehouse for on behalf of the 1st Defendant.
25. Paragraph 15 is disputed and the Plaintiff shall be put to strict proof.
26. Paragraph 16 and all the claims as against the 1st and 2nd Defendant are denied in their entirety.
27. Further to the foregoing, the 3rd defendant is in no way liable to the 2nd Plaintiff as he was acting at all material times as receiver and manager for Nyiombo Investment Limited, without personal liability.

COUNTER CLAIM

28. The 1st Defendant repeats paragraphs 1 – 24 of its Defence.
29. By agreement dated 9th January, 2018, the 1st Defendant offered to sale and the 2nd Plaintiff accepted to purchase 154.25 metric tons of compound D fertilizer NPK 10:20:10+6s and 4,806.10 metric tons of Urea 46% N, valued at US\$2,232,157.50.
30. The said Agreement was signed for and on behalf of the 1st Defendant by Mr. Kwazi Dlamini who was the Managing Director then but was later summarily dismissed from employment on 24th February, 2018 and Mr. Jomo Matulula appointed to act as Managing Director.
31. Despite the 2nd Plaintiff having taken possession of the 1st Defendant stock of fertilizer in the Copperbelt, Luapula and

North Western Province of the Republic of Zambia, the 2nd Plaintiff has never paid the contract sum to the 1st Defendant.

32. It was, amongst other things, on the above premise that the 1st Defendant reported the theft of fertilizer to the Zambia Police as the 2nd Plaintiff had taken possession of fertilizer from various depots belonging to the 1st Defendant without having paid for it and begun to repackage it to disguise its source.

33. The fertilizer that was fraudulently and forcefully taken by the 1st Plaintiff was part of the fertilizer which the 1st Defendant had reported having been stolen by the 2nd Defendant.

34. The said fertilizer was given to the 1st Defendant by the government of the Republic of Zambia through the Ministry of Agriculture under a debt swap agreement dated 26th September, 2017.

35. By reason of the foregoing, the 1st Defendant has suffered loss and damage.

And the 1st Defendant claims:

- i. The 2nd Plaintiff pays the sum of US\$2, 232, 157.50 being the agreed contract price for the supply of fertilizer under agreement dated 9th January, 2018.***
- ii. Damages for loss of use of funds.***
- iii. In the alternative, the 1st Plaintiff renders an account of the fertilizer fraudulently and wrongfully taken from Plot No. 917A, Kabompo Road, Ndola and reimburses the 1st Defendant the money equivalent of the same.***
- iv. Any other relief the court will deem fit;***

- v. Interest; and**
- vi. Costs.**

Mr. Denis Bwalya a business consultant at Ronbeat Investments was the 1st Plaintiff's witness in this matter, he testified that the business of Ronbeat investment was about leasing of a warehouse to Nyiombo Investments in this matter. He said Ronbeat investment in this matter leased a warehouse to Nyiombo investment between 2016 and 2017 for the distribution of Nyiombo investment Limited agricultural products. He said the total amount of money outstanding on the lease was 98, 200 US\$. He said the warehouse Ronbeat leased out to Nyiombo was on plot 8263 Harmershold drive Itawa Ndola. He said this amount is still outstanding and the Defendants are not disputing it but have failed to honor it. He therefore asked the court to grant the 1st Plaintiff Judgment in the sum of USD 98, 200 and all the other claims in the writ of summons.

Cross examined by Mr. Sianondo for the 2nd Plaintiff, he explained that he has been with Ronbeat for 15 years and he was aware that there was an execution which was done by Ronbeat. He said at the time of Execution, the warehouse was in the hands of Nyiombo investments and it was being guarded by the state. Asked as to who the fertilizer belonged to he said, it belonged to Nyiombo Investments. He said when asked that he was not aware the fertilizer in the warehouse belonged to Alpha Commodities and that he was equally not aware that the owner of the premises where the execution took place was Copperbelt Forest Company Limited. Referred to the letter

at page 34 the 1st and 3rd Defendant's Bundle of Documents he confirmed that it was Copperbelt Forest Company Limited addressed to the Chief Accountant of Alpha Commodities for the lease of Plot 917A Luanshya Road Ndola. Asked if that was the place where the execution took place he said he was not sure. He agreed when asked that Ronbeat are the people who are pointed a bailiff and they appointed the private Bailliff and not a state bailiff. He said he was not aware whether Ronbeat accounted for any fertilizers to Nyiombo Investment of to the state. Further he said he did not know what the Bailiff did as he did not account to Ronbeat but they had appointed him. Cross examined by Mr. Muyatwa for the 1st and 3rd Defendants, he stated that by qualification, he is a marketer with a certificate from the Zambia National Diplomacy. and that he has been practicing Marketing and Business Consultancy for a period of 8 years. And he was well vest in company governance. Asked whether the date of USD 98, 200 Nyiombo owed Ronbeat was a secured debt or not, he said he was not aware. He agreed that he was aware Nyiombo Investments Limited was and is still in receivership. He said when asked that he did not personally know Mr. David Katepa who was receiver manager of Nyiombo Investment. He equally said he knew Mr. Andrew Kombe was appointed receiver for Nyiombo Investment but he did not know him in person. He said he was not aware that Mr. David Katepa was appointed Receiver for the secured creditor Southern and Eastern Development Bank. Asked if Ronbeat had declared their unsecured debt to the Receiver manager, he said he was not aware. He agreed that despite not being aware, Ronbeat

appointed a private bailiff by the name of Webster Katongo to execute an unsecured debt on a warehouse in Ndola. He explained that he was not present when the execution took up and he did not know what transpired when the execution took place. He confirmed he was aware the Private Bailiff carried out the execution but that he did not render a report to him but to the Chief executive for Ronbeat Mr. Ronald Nsokoshi. He explained in Re-examination that what he knew about the issue of Ronbeat issuing the process of execution was that there was a court order. He said he was not present when the Bailiff executed and he did not know when Nyiombo Investment was put under receivership.

Mr. Ronald Nsokoshi Managing Director for Ronbeat Investment was the 2nd witness for Ronbeat investments the 1st Plaintiff herein. He testified that he knows Nyiombo Investment Limited as they were Tenants of Ronbeat at Plot 8263 Daghamerjold Drive Ndola which is a warehouse for Ronbeat Investments Limited. He said Ronbeat Investment Limited took out an action against Miyombo Investment Limited as Nyiombo Investment Limited owed them 98, 000 USD in rental arrears. He said Ronbeat Investment took Nyiombo Investment Limited to court where they secured a default judgment against them and sometime in 2019 they issued a Fifa against them but by the time they issued the Fifa, Nyiombo Investment had left their premises. He said they engaged the private Bailiff by the name of Webster Katongo and took him to the premises along Kabompo Road where the Fertilizer for Nyiombo Investment was being kept by

Mr. Katepa. He said he knew the fertilizer was for Nyiombo Investment as there was a report written by officers from the police and a letter by them written to the effect that they wanted to handover the fertilizer for Nyiombo Investment to Mr. Katepa. He said that after he had showed the Bailiff the place, he left and that to date Ronbeat Investment has not been paid its money by either Nyiombo Investment or by the Bailiff and Ronbeat Investments Limited is still owed USD \$98, 000. The witness explained that he knows Alpha Commodities Limited, but that the warehouse they had entered had fertilizer for Nyiombo Investment Limited. He denied having carried away 21, 000 bags of Urea and D compound. He explained with reference to paragraph 7 of the statement of claim that he was called by the police of Ndola in the presence of Mr. Katepa and 2 of his friends and he was told that 2 truck drivers were arrested as they were found at the scene where the fertilizer was and when asked they said they were hired by a Mr. Frempong. He said he had previously reported to the police that the fertilizer had been moved from the Ronbeat Warehouse. He said he did not know where the fertilizers were taken to but what he knew was that it had been taken by a man who had been in charge of the warehouse by the name of Kondwani Chisale. He stated that he would like the court to order whoever is in charge of Nyiombo to pay their company its money and that he also claims damages and interest from the time of the action to time of Judgment.

Cross examined by Mr. Sianondo, he said when they went to the warehouse, they found that the warehouse was locked and that he took the Sherriff Mr. Webster Katongo to the Warehouse. He said Webster Katongo did not give him any report after execution and that he personally did not take any fertilizer from the warehouse. He said he learnt when at the police station that the keys to the warehouse were handed over by the police to Mr. Frempong. And that the 5 drivers who were caught by the police were hired by Mr. Frempong. He said Mr. Frempong was also at the Police station the time he was there and that he was almost locked up by the police because the 5 drivers exonerated themselves and explained that they had been hired by Mr. Frempong they had been taking fertilizers to Mkushi for a week. He said he believed the fertilizers at the warehouse where he took the Bailiffs was fertilizer from his company's warehouse because he had reported to the police and after investigations, the police had told him that they had found where the fertilizer was and the report to that effect was at pages 63 and 64 of the 1st and 3rd Defendant's Bundle of Documents. He said he was not aware that the building he took the bailiff to belong to Copperbelt Forest Company Limited. He explained when referred to the lease, from the lease agreement shows it was rented by Alpha Commodities and not Nyiombo. He said the person to explain where the fertilizer went to are the police and Mr. Frempong who was the agent for Mr. Katepa.

Cross examined by Mr. Muyatwa, he agreed he had engaged Mr. Webster Katongo to execute the fifa which was before court. Asked

whether Mr. Katongo had executed the fifa, he said he was not aware whether Mr. Katongo had executed the fifa or not. Referred to paragraphs 3 and 4 of his defence which talk about Mr. Katongo executing a fifa, he still insisted he was not aware as to whether Mr. Katongo had executed a fifa or not. He stated that it was true he had said 5 drivers engaged by Mr. Frempong were detained. Asked if the drivers had moved the fertilizers, he said records were there to show that they were arrested. He stated that he did not bring the document to show that they were arrested and that no one stopped him to bring the documents to court. He agreed that his own evidence before court about their arrest is what he had been told. He referred to the affidavit of Joliff Nyirenda, he agreed that Joliff Nyirenda's affidavit showed that Ronbeat removed the fertilizers. He however said he had no idea about Ronbeat moving the fertilizers to its own warehouse. He further when referred to page 116 of the 2nd Plaintiff's bundle of documents agreed that according to the letter their Mr. Joliff Nyirenda found the witness and others loading the fertilizer in the presence of police officers. Further he agreed that Mr. Jollif Nyirenda's letter further alleged that the witness had said the fertilizer did not belong to Alpha Commodities. He stated when asked that when he took Webster Katongo to Alpha Commodities warehouse, he believed that the fertilizer belonged to Nyiombo Investments. And he said he believed so because that's what the police discovered according to their report. He said he had dealt with Nyiombo investments for 8 years. He stated when asked that he was not aware the fertilizer in the warehouse was managed by collateral

managers. Referred to the letter at page 1 Plaintiff's bundle of documents he agreed that the letter was showing that as at 30th October, 2018, there were 30, 434 bags of fertilizers in the warehouse. He agreed that according to the letter, the collateral managers were protesting because of the way they were treated by the police and that the letter further alleges that the police officers loaded fertilizers into the trucks. He said from the evidence from the documents, there is no mention of Frempong. Asked if he had brought any evidence, other than what he was told to dispel the allegations in the letters, he said he had not. He identified the document at page 52 as the collateral agreement management and said the warehouses which were subject to the collateral agreement were plot no. 2605 Chinika Road Lusaka, Plot No. 917A Luanshya Road Ndola and Plot No. 420 New Market Nchelenge. He identified the documents at page 28 of the 2nd Plaintiff's Bundle of Documents as cash receipts. Asked if the fertilizer in the Ronbeat warehouse was sold to Alpha Commodities, he stated he was not aware. Asked if prior to the execution there was any report to the effect that Alpha Commodities stole fertilizers belonging to Nyiombo, he said according to the Police Report signed by Madam Mulele, that was what was stated. He said according to that report the complaint was launched by Mulenga Kombe and that complaint was before David Katempa came into the picture. He said he was aware of another complaint launched by David Katempa and according to him, the investigations showed that the fertilizer belonged to Nyiombo. He agreed that the fertilizer was at the premises where Ronbeat caused an execution to

be carried out. He agreed when asked that he was aware that at that time, Nyiombo investments was under receivership. He stated that his company registered its debt with the receiver manager but he had not brought any documents to show that, and further that his company was equally a secured creditor but he did not bring any documents to show that.

Cross examined by Madam Choongo for the state, he stated that he went to the Police twice over this matter but did not remember the dates when he went there. He said the 1st time he went to the police, he went to complain about the fertilizer for Nyiombo which had been in the Ronbeat warehouse but was still in the records of the receiver. He said the receiver Mr. Andrew Kombe had indicated that they enter into a debt swap agreement over fertilizer which was in the Ronbeat warehouse and he went to complain because the fertilizer was no longer in the Ronbeat warehouse as it had been taken by Nyiombo. He said his complaint to the police was not in writing but verbal. He explained when asked that the second time he went to the police was when he was called by the DCIO who wanted to question him about the fertilizers he allegedly took away. And that was after they had arrested the 5 drivers. He said he told the police he was not involved regarding the fertilizer and that it was only the police Mr. Frempong and Mr. Katepa who could tell where the fertilizer was. Asked why he said so, he explained that at the first handover, the police handed the keys to Mr. Frempong who was Mr. Katepa's Agent and after a month Mr. Frempong and the drivers were detained when they were

found moving the fertilizers to an unknown place. Further he explained that at the second handover, the police handed over the keys to Mr. Katepa and his team from Lusaka. Asked if he witnessed the police handing over the keys, he said he did not, but stated that the police should account because they were the people manning the warehouse according to the report. He said other than the report, there was nothing to show that the police were manning the premises. He stated that he did not raise any wrong doing against the police in his pleadings and that he had no claims against the police.

In re-examination, he stated that there was no truth in the document of Jolif Nyirenda at page 29 in the Affidavit of Jolif Nyirenda which alleged that the Plaintiff collected the fertilizers.

For the 2nd Plaintiff, Alpha Commodities Ltd, Mr. David Kayemba Katepa an accountant with the firm of Steward and Persly was the 2nd witness in this matter. This witness told court that he was appointed receiver for Nyiombo Investment Limited by the PTA Bank in April, 2018. As the PTA Bank was trying to recover loans advanced to Nyiombo Investment worth about 32 million Dollars. He said after his appointment as a receiver, his firm undertook an investigation, which established that there was pilferage by the shareholders of Nyiombo Investments of the assets of Nyiombo Investments. He said the main shareholders of the Nyiombo Investments were Doctor Maurice Jangulo and Mr. Gulam Patel. He said upon realizing the extent of the theft, they requested the Zambian Police to assist with

the recovery of stolen property of Nyiombo Investment Limited. He explained that at the time of the request, the property was not really known, the Zambian Police was tasked to establish what property was really in question. He said the request to the Zambian Police was made in writing by a letter to the Inspector General of the Zambian Police at Force Headquarters. He said at that time there were several properties identified and the recovery process commenced on all fronts. And in this particular case before court, the recovery involved fertilizers. He said they received a tip off and based on the information received, they zeroed in on recovery in Ndola which involved several warehouses which were either owned or managed by Alpha Commodities. He explained that the information they received was from Mr. Andrew Kombe who was appointed Receiver Manager for the same company Nyiombo Investments approximately 1 month before he was appointed. He said Mr. Andrew Kombe was appointed by Nyiombo Investments Limited a company which according to their investigations was owned and managed by Mr. Gulam Patel and Mr. Kombe was appointed on the strength of default by Nyiombo to settle a commission of 5 million dollars to Nyimba Investments. He said they assigned an associate of theirs by the name Mr. Kofi to handle the recovery process in Ndola. And Mr. Kofi informed them that the task force had been constituted to help with the recovery process and key names which were mentioned included Mrs. Charity Katanga, Mr. Ngimbu and other officers from the DEC and the Office of the President. He said the task force located the fertilizers at 2

warehouses the key one being the on Kabompo Road which belonged to ZAFICO. He said at the time of the seizure, he and his fellow partners were in Lusaka but Mr. Kofi was constantly reporting to them about the happenings in Ndola. He said they were later informed that Mr. Ngimbu the Investigations Officer wanted to have a word with them and Mr. Ngimbu informed them that the Depo manager for Alpha Commodities who was the Senior Manager for Alpha Commodities had since abandoned the warehouses and there was no local management for warehouses for Alpha Commodities. He said Mr. Ngimbu told them that he wanted to question the Directors of Alpha Commodities about what he found in the Warehouses and that he particularly hinted to them that fertilizer which was peculiar to Nyiombo Investment Limited in brand and labelling was found in the warehouses. He said he further informed them that he had found evidence of the repackaging scheme where fertilizers peculiar to Nyiombo Investment Limited was being repackaged into Alpha Commodities Sacks. He said he advised them that his team of officers had confiscated the warehouse, packaging materials, the scale as well as sewing machines as evidence. He said they were informed that for 2 days they had sought to interview the operators of Alpha Commodities in particular Dr. Maurice and the Legal Counsel Muna Sikaulu. He said after that, the officers then proceeded to try and interview the 2 listed Shareholders. He said the effective shareholder was Dr. Maurice Jangulo and Mr. Sikaulu was also Shareholder and Director. He explained that he got this information from Mr. Ngimbu who was the investigating officer and a

person he used to discuss with on a daily basis. He explained that the Mr. Ngimbu he was referring to has since passed away. He said police officers were deployed to guard the 2 confiscated warehouses in Ndola and during that period. The witness further informed court that Mr. Koffi informed them that he was presented with a writ of fifa by Mr. Ronald Nsokoshi who was accompanied by police officers and who told him that he was representing a company called Ronbeat. He said Mr. Koffi informed him that based on the Fifa presented to him; he released the fertilizers to Mr. Nsokoshi. He said at the time of such release, the two warehouses were being guarded by police officers and that the writ of fifa was executed by a Bailiff called Katongo. The witness told court that he was informed that upon presentation of the fifa, the fertilizers was released by the police who were guarding the two warehouses which were under investigations. He identified the fifa the document at page 25 of the 1st and 3rd Defendants' Bundle of Documents.

He testified that he was informed that all the fertilizer was taken away and he said the sought to establish the root of the fifa and in the process he and Mr. Musonda and other officers from their office travelled to Ndola. And when they reached Ndola they sought to establish which Bailiff was in the custody of the fertilizer and they went to the Sherrif's office where they learnt that Mr. Katongo was a private Bailiff. He said this information is confirmed in the letter at pages 26 and 27 of Defendant's bundle of documents. He said after he got this information from the Sheriff's office, he had the series of

meetings with Mr. Nsokoshi who he tried to explain the illegality to. After which they tried to get in touch with the Private Bailiff Mr. Katongo but failed. He said their investigations revealed that Mr. Nsokoshi had custody of all the fertilizer through a company called Ronbeat. He said they tried to recover the fertilizer from Mr. Nsokoshi but according to him Mr. Nsokoshi later escaped to the USA and after that they tried to recover the fertilizer through the police but failed to do so. He said the police in an effort to recover the fertilizers, constituted a team through the office of the Inspector General and the team consisted of Mr. Nsofu Director Criminal Investigations Division (CID), Mr. Musonda and Mr. Ngulube who were all tasked to assist with broader recovery efforts. He said that in the process, it was established that apart from fertilizers confiscated in Ndola, there were other quantities of fertilizers for Alpha Commodities which appeared to belong to Miombo in the Copperbelt Province, North-western Province, Luapula Province, Muchinga Province and Western Province. He said he attached himself and other officers from his firm to taskforce in an effort to recover the fertilizers from the different location in the provinces mentioned. He said they went to various locations in the various provinces mentioned to issue seizure notices for the fertilizers and in the process, they were confronted by officers from the office of the President who ordered them to stop the process and come back to Lusaka Force Headquarters for further instructions. He said Mr. Musonda and Mr. Ngulube who were part of their team continued to pursue the case. The witness explained that they had written to both the Inspector General of the Police and

the Director General of the Office of the President. The witness stated that the letters were written to both the Inspector General of the Zambia Police and the Director General of the office of the President to get the status over this case but the letters were not respondent to. He explained that, they had a confrontation with the Officers from the Office of the President in Kawambwa and they were instructed to give back all the fertilizers which had been seized in the provinces despite the fact that investigations were still on going. He said the fertilizers they were instructed to hand back included the fertilizer in the two warehouses on the Copperbelt which also included the warehouse at plot 917A Kabompo Road Ndola. He explained that the team from Force headquarters went on the ground after the Ndola event. The witness explained that he later in his capacity as the receiver of Nyiombo Investment sued Ronbeat and Mr. Webster Katongo. He said he commenced the action when they realized that Mr. Ronald Nsokoshi had taken over possession of the fertilizer which was in the Kabompo Road warehouse which was being managed by Alpha Commodities. The witness explained that the Bailiff in question according to their findings had no authority or capacity to take position of the fertilizer. He said they further established that the procedure of custody of the fertilizers was not followed. At the Fertilizers was in the private hands of Mr. Nsokoshi.

He said the claim he commenced was for 6, 300, 000.00 which was the value for the 21, 000 bags of fertilizers. He gave the breakdown of the fertilizers as follows:

30, 434 bags by 50kg of Urea fertilizer and 396 50kg bags of Compound D fertilizers. He said that according to their investigations the security personnel on the ground indicated that the number of bags of fertilizer was 21, 000 bags but his group were not able to count the number of bags before Mr. Nsokoshi pounced. The number of 21 000 was indicated to them by the police as well as Mr. Koffi their associate.

Commenting on the evidence of Mr. Jollif Nyirenda the Chief Accountant of Alpha Commodities to the effect that the keys of the warehouse were handed over to him, he explained that when the police failed to get hold of the Director of Alpha Commodities Dr. Maurice Jangulo, they advised them that since they had failed to get hold of the Director, if they wrote a letter to the police indicating that they were withdrawing the claim on that particular warehouse, then the Fertilizer will be handed over to them as receivers and they followed the advice by the police and wrote a letter and while in the process of waiting for the response and the keys, Mr. Ronald Nsokoshi presented a fifa and carried away all the fertilizers. He said at the time the fertilizers were taken away by Mr. Nsokoshi, the warehouse was in the hands of the police. And Mr. Koffi was only handed over the keys after the fertilizers had taken away by Mr. Nsokoshi. He said they wrote a letter to the police seeking guidance on how to proceed as this was an open criminal case.

Commenting on the 2nd Plaintiff's claim to the effect that he was not negligent as the receiver in the manner the fertilizer was lost, he

explained that they took all humanly possible steps to secure the fertilizers by putting a police man to guard the fertilizers and that they made an emphatic effort to recover the fertilizers from Mr. Nsokoshi to get a satisfactory, and when that failed, they escalated the matter to the police as they believed an act of a criminal nature had taken place. He said they did not release the keys to another person without the consent of Alpha Commodities as to release the keys would have interfered with the investigations. He said when Mr. Nsokoshi went on sight, the locks were broken and there was no formal handover of the keys. He said their company has filed a counterclaim against Alpha Commodities. He explained that during the farming season, 2013 - 2014, Nyiombo had participated in FISP Programme and supplied various fertilizers to government. However, payment was not made on time and Government opted for a debt swap, so instead of receiving cash, Nyiombo was given fertilizers from Nitrogen chemicals of Zambia which fertilizers was uniquely branded and labelled as payment by the government. He referred a court to page 1 of the 1st and 3rd Defendant's bundle of documents which he said was a debt swap agreement between the Government and Nyiombo Investment. He said paragraph 1.2 of the Debt swap agreement show that the government was to supply 32, 000 metric tonnes of D Compound fertilizers equivalent to K70, 400, 000.00 and the government was to further to supply under paragraph 1.1 32, 000 metric tons of Urea Fertilizers. He said according to their understanding from the documents, Alpha Commodities bought most of this fertilizer and it was sitting in warehouses on the

Copperbelt, North-western and Luapula provinces. He referred the court to page 7 of the 1st and 3rd Defendant's bundle of documents which page he identified as the agreement between Nyiombo Investments and Alpha Commodities. He said the agreement was signed on behalf of Nyiombo by Mr. Nkwazi Dhlamin and as per page 4 of the contract, the consideration amount was 2, 232, 157.50 USD. HE said their findings further showed that Alpha Commodities Limited took possession of these quantity of fertilizers in the various locations as agreed, and that from their investigations, the quantities of fertilizers were never paid for and they could not trace any of the receipts for payment nor could they trace any payments in the Bank records or other records of Nyiombo. He said he could not recall the agreed mode of payment but all the agreements had an account No. attached to them. He referred the court to page 10 of the Bundle of Documents clause 5 which stated that payment was to be made to the account listed there under.

Commenting on the evidence by the Chief Accountants of Alpha Commodities that Nyiombo did not apply all the quantities of fertilizer, he said the Chief accountant was not being truthful as the fertilizer was sitting in various locations and the spirit of the contract was based on what had been verified in the various warehouses. He said according to what he was told by Mr. Dhlamin, the verification was done by an independent stock verifier. The witness referred the court to page 24 of the 1st and 3rd Defendant's Bundle of document and testified that they reflected the quantities he was referring to.

On the statement by the Chief Accountant of Alpha Commodities in his affidavit in support of originating summons for an interim measure of protection particularly paragraph 7 to the effect that Miombo investments only supplied 2, 347.25 metric tons of fertilizer. He commented that the statement did not tally with the other one and they asked for further evidence as there was fertilizers already at the various places and the stock were verified by both sides. He referred the court to the letter at page 23 of the 1st and 3rd Defendant's Bundle of Documents and stated that the letter showed agreed quantities verified between Alpha Commodities and Nyiombo Investments and that made them hold the opinion that full supply had been done.

Commenting on the evidence of the Chief Accountant of Alpha Commodities that some fertilizers were paid for, he stated that having looked at page 28, his comment was that the documents do not state who the supplier was and who paid and whether this was the goods received note or a cash receipt. He further said the document further referred to the 2012 - 2013 farming season. He stated in conclusion that he was asking the court to compel Alpha Commodities to honor the agreement by paying for the fertilizers supplied.

Cross examined by Ms. Chongo for the State, he stated that they had done a formal letter reporting the matter to the police but that he had not seen the letter in the bundle of documents before court. He explained that when they reported to the police, the police put in place two teams namely one which was led by Mr. Ngimbu and

another one at Force headquarter which was led by Mr. Nsofwa. He said apart from Mr. Ngimbu, he remembered another officer on the team by the name Edward and stated that they also had discussions with Ms. Charity Katanga who was by then Copperbelt Police Commissioner. Asked if he remembered any officers from the office of the president who he dealt with, he said the people who communicated with them were Mr. Musonda and Mr. Ngulube while they were in Kawambwa. He stated that after the communication from the office of the president, he did not have any further communication with the police other than through formal letters. He explained that he did not have any claims against the police.

Cross examined by Mr. Sianondo, he confirmed that Mr. Kofi was his agent and that it was he personally who was appointed as a receiver and not his firm. He agreed that he understood that the claim of Alpha Commodities was for fertilizers lost while in his possession and in the possession of the police. He agreed that the document at page 8 of the 1st and 3rd defendant's bundle of pleadings was the document he and Nyiombo filled into court. Asked if the agent was given keys while the stock was in the warehouse, he refused saying the pleading does not say so. He said what the pleading say is that his agent was given keys to watch over the warehouse and stock. He agreed that according to their statement of claim, they were 21, 000 bags in the warehouse as stated in paragraph 6 at pages 18 and 19 of their bundles of pleadings. He agreed that according to the documents Alpha Commodities actually produced the records of the fertilizers

which was in stock. He said he agreed that he and the police took charge of plot 917A Kabompo Road Ndola because it belonged to Alpha Commodities. He agreed that his evidence was to the effect that his agent Koffi was presented with a fifa and he released the fertilizers to Mr. Nsonkoshi of Ronbeat. He agreed the name of Alpha Commodities did not appear on the fifa but that despite that being the case his agent released the fertilizers to Ronbeat. He stated when asked that he was aware the principle is liable for the acts of the agent. He agreed when asked that civil servants like the sheriff officers have identity cards. He refused the suggestion that Alpha Commodities lost the fertilizers because of the omission of his agent. He agrees that when his agent Mr. Kofi and Zambia Police were in charge of the warehouse they had the responsibility to protect the interest of all parties and that Alpha Commodities had an interest in the fertilizers in the warehouse. He agreed that at the time the third parties were fighting over the fertilizers, it was under the control of the Zambia Police. He stated that he was not aware whether Alpha Commodities had recovered fertilizers or not and that he was not aware of the kind of business Alpha Commodities were dealing with.

Under re-examination, he explained that his agent did not have any authority after he was presented with the fifa purportedly from the court.

Mr. Kofi Agyen Frempong was the second Defence witness for Nyiombo Investments Limited. He testified that he is the security consultant and he came to know Nyiombo Investments and Mr. David

Katepa through the work Mr. David Katepa was doing as receiver for Nyiombo Investments Limited. He said sometime in 2018, Mr. David Katepa engaged him as an agent to go to Ndola as he told him that there were some warehouses where fertilizers were being held which were under investigations and the warehouses needed to be secured and as such, he asked him to go and see the warehouses and possibly secure them. He said when he got to Ndola; he went to Ndola Central Police station as he had been instructed to and introduced himself. He said at the police station he met an officer by the name Ngimbu who took him to another office where he introduced him to another officer whose name he could not recall. He explained that when he introduced himself to the police, he was asked to give them the documents he had been given by Mr. Katepa and he asked Mr. Katepa to send the documents. He said the police officers equally told him that they needed to get the clearance in order to show him the warehouses and because he had to get more documents, he was told to go the police the following day. He said the following day he went back to the police station with more documents Mr. Katepa had sent, and he was taken to the warehouses by Mr. Ngimbu and the other office whose name he did not know. He explained that he was being taken to the warehouse as he had been asked to see what was happening there and make an assessment so that he could see how they could monitor and secure the warehouse. He said at the warehouse, they found the place locked but he did not know who had locked it. He said the officers then tried to open the warehouse and failed to and then they then decided to break the locks so that they

could see what was inside. He said after the warehouse was opened, they went inside and the officers showed him what was inside. He explained that as they were touring the warehouse, some gentlemen walked into the warehouse and two of those identified themselves as Bailiffs and gave their names as Mr. Katongo and James. He said those two Gentlemen were followed behind by Mr. Nsokoshi of Ronbeat somebody he knew before as a business man in Ndola. He said the Bailiffs then presented a document to him, Mr. Ngimbu and the other officer and said they had gone there to execute the document. He said the document was headed fifa on top. He identified the document at page 25 of the 3rd and 4th Defendant's Bundle of documents as the fifa he was shown. He said at that point he asked Mr. Ngimbu what the document was and Mr. Ngimbu told him it was a fifa and after that he said one of those gentlemen told him that they had been instructed to seize the assets from the warehouse. He said those people then called some other people and trucks came into the yard and they started loading fertilizer into those trucks. He said he was told the taking away of the fertilizer was something to do with Nyiombo but that he had not himself authorized it. He said the type of security he was supposed to provide was physical security after an assessment. He said he failed to object and then he picked a notebook from the car and started recording the truck numbers and then the amount of fertilizer which was going onto the trucks. He said at one point, he decided to follow the trucks to see where they were going and he followed them to Itawa to a place near the airport which place had a warehouse. He said he did not

know the owner of the warehouse but noted that it was written Ronbeat on top. He said after that he went back to the warehouse to continue recording the truck numbers and quantities of the fertilizers they were taking away. He explained that he did not have his copies as he had lost them. He said later, he informed Mr. David Katepa as to what was happening and where he had seen the trucks going to. He said at that time, Mr. David Katepa was in Lusaka. He said after receipt of this information, Mr. David Katepa travelled from Lusaka to Ndola and they met at the Ndola Central Police Station and Mr. David Katepa reported the matter to the police who advised them that Mr. Nsokoshi and the Bailiffs should also be called to the police station. He said Mr. Nsokoshi came to the police station and he was asked to call the Bailiff and Mr. Nsokoshi called the Bailiffs and put the phone on loud speaker and when the Bailiffs responded he replied saying he was coming but despite several assurances that he was coming he never showed up. Then later they were advised to go back to the police the following day and when he went back the following day, the police interrogated him and after interrogating him, they allowed him to travel back to Lusaka.

Cross examined by Mr. Lisholo, the witness confirmed that at the time he went to the warehouse, it was secured by the police and at that time, there was still fertilizers in the warehouse. He agreed further that he had followed one of the trucks and he discovered that they were delivering fertilizers to a warehouse labelled Ronbeat. He agreed that when he was at the police, he found out that the police

not. Asked whether or not he left Mr. Nsokoshi detained at the police station, he explained that Mr. Nsokoshi was not detained. He explained that Mr. Katepa had named Mr. Nsokoshi as the person who stole the fertilizer. Asked if Mr. Nsokoshi was arrested by the police, he stated that he was not. He further explained when asked that he did mention to the police that he followed the truck to the warehouse which they took fertilizers to. Asked if Mr. Katepa had obtained a stay preventing the sale of the fertilizer, he said he did not know. He explained when asked that he was not paid for his services as he was to be paid for securing the warehouse.

Cross examined by Mr. Sianondo, he agreed he had heard the name of Alpha Commodities Limited but stated that at the time of his engagement, he did not know whether it was the company which had the fertilizers or not. Asked as to which company was being investigated, he said the companies which were being investigated were Nyiombo and Alpha Commodities. He confirmed to court that they were more than 20 trucks which were actually truck and trailer which carried away fertilizer from the warehouse. He stated that page 7 of the Bundle of Pleadings showed that the 1st and 3rd Defendants were Nyiombo and David Katepa and that page 8 paragraph 11 of their defence alleged that the keys to the warehouse were handed to him and that he was in possession of the Warehouse. Asked if as the person in possession he had asked for IDs he said he had. Further he agreed that he learnt that the issue of Bailiffs was followed by Mr. Katepa through an inquiry with the Judiciary and he

further agreed that the inquiry should have been made before the fertilizer was taken out of the warehouse. He stated when asked that the fifa he saw was not labelled Alpha Commodities. He stated when asked that the lease agreement at page 33 of the 1st and 3rd Defendant's Bundle of Documents showed that the tenant of Plot No. 917A Kabompo Road during the period 20th November, 2017 to 19th November, 2019 was Alpha Commodities. He agreed that paragraph 24 at page 10 of the 1st and 3rd Defendant's defence in the bundle of pleadings stated that Plot No. 917A Kabompo Road was guarded by Zambia Police and Himself. Further he said it was correct for Alpha Commodities to look to the people who were guarding the fertilizers for the fertilizers.

In re-examination, he explained that although the documents show that he had keys that did not mean anything as what was on the ground was that the locks to the doors were broken and so the keys did not mean anything. With regard to the contents of paragraph 24 at page 10 he said he agreed he and the police were guarding the warehouse as that was what was written in the paragraph but that the possession on the ground was different.

At the close of the case, all the parties agreed to file written submissions but only the advocates for the 2nd Plaintiff filed their submissions.

From the evidence received in this matter, from Mr. Denis Bwalya and Mr. Ronald Nsokoshi, the 1st Plaintiff Ronbeat Investment

Limited entered into a lease agreement with the 1st Defendant Nyiombo Investments Limited in receivership and the 1st Plaintiff leased out its warehouse at Plot No. 8263 Daghammerskjold Drive in Itawa Ndola. The evidence from the 1st witness Mr. Dennis Bwalya and that of the 2nd witness Mr. Ronald Bwalya Nsokoshi showed that the 1st Defendant Nyiombo Investments Limited in receivership accrued a total of US\$98, 200 in unpaid rentals.

In cross examination, Mr. Denis Bwalya, who stated that he was conversant with this matter, said he was aware execution was carried out by Ronbeat in their case against Nyiombo Investments Limited. He said as far as he was concerned, when execution was carried out, the warehouse was in the hands of Nyiombo Investments Limited and at that time, it was being guarded by the police. This witness's evidence, was that he was not aware that the warehouse where the execution took place namely Plot 917A Luanshya Road was at the time of execution in the hands of Alpha Commodities Limited.

The witness stated that the Bailiff they used was a private bailiff and not from the Sherrif of Zambia. The evidence of the 2nd Plaintiff Witness Mr. Ronald Bwalya Nsokoshi equally show that they engaged a private bailiff by the name Webster Katongo whom they took to the premises along Kabompo Road Ndola where he said he believed the fertilizer there was for Nyiombo Investments who were owing his company US\$98, 200. This witness though agreeing his company took the Bailiff to the warehouse and hired the bailiff claimed that the bailiff did not account for the fertilizer seized to his company.

The evidence of Mr. David Kayemba Katepa showed that he was appointed receiver for Nyiombo Investment from April, 2018 by the PTA Bank.

Mr. Katepa's evidence further shows that his investigations lead him to engage the Zambia Police to assist him to recover property which he believed had been stolen from Nyiombo Investments Limited and in the process of investigation, according to him the police traced fertilizer removed from Nyiombo Investments Limited to some other warehouse the key one being a warehouse on Kabompo Road in Ndola which warehouse was under Alpha Commodities Limited but was abandoned by Alpha Commodities Management on the Copperbelt. According to the witness, the officer in charge of the investigations by name Mr. Ngimbu briefed him and his partners that they had found fertilizers which were peculiar to Nyiombo Investments in brand and labelling in the warehouses. And further that they had found evidence of a repackaging scheme where fertilizers peculiar to Nyiombo Investments in branding and labelling was being repackaged in bags labelled Alpha Commodities.

This witness's evidence further indicates that he had wanted to interview the officers for Alpha Commodities particularly Dr. Morris Jangulo and Legal Counsel Mr. Muna Sikaulu. Unfortunately, he did not have the opportunity to do so and then later, their man on the ground Mr. Kofi was presented with the writ of fifa by Ronald Nsokoshi who was in the company of police officers and upon being presented with a fifa the police guarding the warehouse released the

fertilizers. This evidence, by Mr. Katepa I observe particularly on what was found in the warehouse is for all intense purposes hearsay evidence as the witness did not personally witness what he was attesting to but got the information as he stated through Mr. Ngimbu a police officer who is since deceased and Mr. Kofi the man his company had sent to be on the ground. Further, though the witness testified that they involved the police in this matter, the court did not have the benefit of any police officer coming to court to shade light on the role they played.

From the evidence before me, what comes out is that Mr. David Katepa as a receiver for Nyiombo Investments Limited caused the police to take charge of the Warehouse which were being manned by Alpha Commodities Limited on the suspicion that there were fertilizers belonging to Nyiombo Investments Limited in the warehouse which fertilizers was being repackaged into sacks for Alpha Commodities Limited. While the police under the instruction of the receiver for Nyiombo Investment Limited Mr. David Katepa had taken possession of the warehouse, Mr. Ronald Nsokoshi on behalf of the 1st Plaintiff Ronbeat Limited went to the Warehouse with the Private Bailiff to execute a writ of fifa on behalf of his company the 1st Plaintiff herein. That Writ of fifa was duly executed and the evidence of Mr. Kofi Agyen Frempong is that he was engaged by Mr. David Katepa the Liquidator to secure warehouses where fertilizers believed to be for Nyiombo Investments was stored. This witness's evidence was to the effect that he introduced himself to the police and

together with police officers namely Mr. Ngimbu and another went to the warehouse to make an assessment as to what was happening. And while they were at the warehouses inspecting the bags of the fertilizers, Mr. Ronald Nsokoshi went to the warehouse in the company of 2 private bailiffs and executed a writ of *fifa* on behalf of Ronbeat Investment Limited.

The evidence of this witness further showed that as the fertilizers which was in the warehouse where execution had taken place, was being carried away, he followed the trucks to Itawa to a warehouse written Ronbeat on top where the fertilizers was being offloaded from.

While the evidence of Mr. Ronald Bwalya Nsokoshi admits that he caused execution to be carried out on the warehouse along Kabompo Road, where the fertilizers for Nyiombo Investment was being stored, he claimed the Bailiff who carried out the execution Mr. Webster Katongo did not give him a report. He further claimed in cross examination that he learnt that the drivers who loaded the fertilizers were hired by Mr. Frimpong and had been taken fertilizers to Mkushi. He explained that he believed that the fertilizers in the warehouse was for Nyiombo Investments as he had carried out an investigation and learnt that that was the place where the fertilizers for Nyiombo Investments who owed his company US\$98, 000 in unsettled rentals had been stored.

When the lease agreement for the Kabompo warehouse was shown to him, Mr. Ronald Nsokoshi agreed that the warehouse was rented by

Alpha Commodities and not Nyiombo Investments. Though Mr. Ronald Nsokoshi stated he was not aware of where the fertilizers were taken to by the Bailiff he took there, I find as a fact that when executing Mr. Webster Katongo was acting for and on behalf of Mr. Ronald Nsokoshi and his company Ronbeat and as such Ronbeat and Mr. Nsokoshi were directly responsible for the execution. The question is having been directly responsible for the execution, can Ronbeat now make a claim on the basis that the bailiff did not account to the company?

From the evidence the private bailiff acted for and on behalf of Ronbeat. If he failed to account, Ronbeat had the right to bring an action against him, however I do not find it just or indeed proper for them to bring an action against the Defendants when the evidence shows they through their agent carried away the fertilizers.

The evidence before me further shows that at the time of execution, Nyiombo Investments was under receivership and the receiver had involved the police to secure the fertilizers in the warehouse and the receiver's agent Mr. Frimpong and the police officers were presented with the writ of *fifa* issued under Cause No. 2017/HP/2072 which writ of execution was in the hands of a Bailiff who was not from the office of the Sherriff of Zambia. The question which has exercised my mind is whether the Defendants in this matter acted negligently in not checking and confirming the writ of *fifa* and the identity of the officer purporting to carry out the execution with the Sheriff of Zambia. From the evidence, before me, it is not in dispute that the

an agent of the 1st plaintiff. And in law, his conduct is aptly captured by the maxim ***(Ce qui facit per allium facit per ce)*** he who acts through another acts himself. In the premises, I find that the 1st plaintiff cannot reasonably claim an amount of US\$98, 000 when by their actions, fertilizers worthy much more than that still remains unaccounted for.

Informed Right to Appeal.

Dated this *2nd* **day of** *November* , 2023.

Katankwa
.....
T.I. Katankwa
HIGH COURT JUDGE

