

**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES DIVISION REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**



IN THE MATTER OF: SECTIONS 61, 58, 87 OF THE ANTI-CORRUPTION ACT NO. 3 OF 2012.

AND

IN THE MATTER OF: AN ORDER THAT FAILURE TO SERVE A FRESH NOTICE OF RESTRICTION FOLLOWING THE EXPIRATION OF ITS INITIAL NINE (9) MONTHS LIFE SPAN RENDERED THE PURPORTED FRESH RESTRICTION NOTICE ILLEGAL AND INVALID.

IN THE MATTER OF: AN ORDER SETTING ASIDE THE WARRANT OF SEIZURE PLACED BY THE RESPONDENT ON THE APPLICANT'S ACCOUNT ON GROUND OF ARBITRARINESS AND ABUSE OF POWER.

IN THE MATTER OF: AN ORDER THAT THE RESPONDENT HAS NO POWER OR AUTHORITY IN MATTERS RELATING TO PROPERTY TRANSFER TAX AS SUCH POWERS ARE EXCLUSIVELY RESERVED FOR THE COMMISSIONER GENERAL OF THE ZAMBIA REVENUE AUTHORITY AS PER PROPERTY TRANSFER TAX ACT AS READ TOGETHER WITH THE INCOME TAX ACT.

BETWEEN:

GODFREY SHAMANENA

APPLICANT

AND

ANTI-CORRUPTION COMMISSION

RESPONDENT

Before the Honourable Lady Justices S. M. Wanjelani, P. K. Yangailo and A. Malata-Ononuju, on this 21st day of June, 2024.

For the Applicant: J. Kayula - Messrs. Lewis Nathan Advocate

For the Respondent: Mrs. G. M. Muyunda, Assistant Director Legal – Anti-Corruption Commission

JUDGMENT

A. MALATA-ONONUJU J., DELIVERED THE JUDGMENT OF THE COURT.

Cases referred to:

- 1. Anti-Corruption Commission Vs Bowman Chilosha Lusambo (2022) Z.M.H.C. 12 (Unreported);*
- 2. Anti- Corruption Commission V. Serioes Farms Limited Appeal No. 1 of 2014;*
- 3. Kalandanya and Others Vs the Attorney-General and Others 2022/HPEF/10 (Unreported);*
- 4. Godfrey Shamanena Vs Anti-Corruption Commission and The Zambia National Commercial Bank Plc. 2022/HB/91 (Unreported);*
- 5. Anti-Corruption Commission Vs Barnnet Development Corporation Ltd. S. C. Z. No.5 of 2008;*
- 6. C&S Investments Limited, Ace Car Hire Limited & Sunday Maluba Vs The Attorney General Appeal No. 31/2003; and*
- 7. Savenda Systems Limited Vs The Anti-Corruption Commission 2023/HPEF/28 (Unreported).*

Legislation referred to:

1. *The Anti-Corruption Act No. 3 of 2012 of the Laws of Zambia;*
2. *Property Transfer Tax Act, Chapter 340 of the Laws of Zambia;*
3. *Income Tax Act, Chapter 323 of the Laws of Zambia; and*
4. *Prohibition and Prevention of Money Laundering Act No. 14 of 2001 of the Laws of Zambia.*

1. INTRODUCTION

1.1 The Applicant filed Originating Summons pursuant to **Sections 61, 58 and 87** of the **Anti-Corruption Act, No. 3 of 2012** on 31st January 2024. The Summons was accompanied by an Affidavit in Support and Skeleton Arguments.

1.2 The Applicant's claims are as follows:

1. *An Order setting aside the Warrant of Seizure placed by the Respondent on the Applicant's Account on grounds of arbitrariness and abuse of power;*
2. *An Order that failure to serve a fresh Notice of Restriction by the Respondent on the Applicant following the expiration of nine (9) months of its initial lifespan rendered the Respondent's continued denial of the Applicant's access to his Account illegal;*
3. *An Order that the Respondent has no power or authority in matters relating to Property Transfer Tax as such power are exclusively reserved for the Commissioner General of the Zambia Revenue Authority as per the Property Transfer Tax Act, as read together with the Income Tax Act;*
4. *Further or other relief that the Court may deem fit; and*
5. *Costs of and incidental hereto.*

2. APPLICANT'S APPLICATION

- 2.1 The Applicant, **GODFREY SHAMANENA (CHIEF NKANA)**, swore the Affidavit in Support in which he deposed that he is a Zambian national and Director and Shareholder of Bisma Investment Limited, which Company owned a Mining Licence 13811-HQ-GML, as per exhibit of the Licence marked **"GS1"**.
- 2.2 He stated that on 20th August, 2021, Bisma Investment Limited offered to sell its Mining Licence, aforementioned, to Pridegems Mining Limited, a subsidiary of Grizzly Mining Limited, at the price of USD 5,000,000.00, but subsequently, a Contract was entered into between the Parties at the price of USD 3,000,000.00, as per exhibits marked **"GS2"** and **"GS3"** respectively.
- 2.3 The Deponent averred that on 5th September, 2022, Pridegems Mining Limited, through its holding Company, Grizzly Mining Limited, made its last instalment payment of USD 165,000.00, into the Deponent's Account at Zambia National Commercial Bank (ZANACO) in Kitwe as per the proof of payment marked **"GS4"**.
- 2.4 It was deposed that on 8th September, 2022, the Respondent herein caused to be issued a Restriction Notice on his Account and served the same on ZANACO

as shown by the exhibited true copy of the said Restriction Notice marked "**GS5**".

- 2.5 He deposed that he was called once by the Anti-Corruption Commission in Kitwe in or about 15th September, 2022, for inquiries as to the source of the money that was transferred into his Account to which he explained as above.
- 2.6 He avowed that he has never been called by the Anti-Corruption Commission on any issue concerning the restricted Account or any other investigation.
- 2.7 The Deponent averred that when the Nine (9) months initial life span of the Restriction Notice was about to expire as prescribed by law, he met with the Director-General of the Anti-Corruption Commission (ACC) and inquired as to when he would be allowed to access his Account and also explained that being a senior citizen and advanced in age, he depended on the same Account to fund his regular medical check-ups as recommended by medical doctors.
- 2.8 The Deponent avowed that in response to his inquiry, the Director-General informed him that the Respondent had extended its investigations into whether the necessary taxes were paid on the said transaction and that to that effect, the Respondent had written to Zambia Revenue Authority (ZRA) for a formal report on the tax compliance status of the transaction that Bisma Investment Limited and Pridegems Mines Limited had concluded.

- 2.9 The Deponent added that to assist the Respondent expedite its findings on the tax compliance status of the transaction in question, he furnished the Respondent with the Tax Assessment Report and Property Transfer Tax Clearance Certificate issued by ZRA to him, indicating that Bisma Investment Limited had fully paid the necessary taxes on the transaction, as per exhibits marked "GS6", being the true copies of the Tax Assessment Form and the Property Transfer Tax Certificate, issued in respect of the transaction in question. That the Respondent did not and has not responded to his letter to date.
- 2.10 It was deposed that when the initial lifespan (nine months) of the Restriction Notice expired on 7th June 2023, he went to the Bank in the hope that his Account was accessible since he had not received any notification that a fresh Restriction Notice had been placed for a further and final term of Six (6) months as prescribed by the law. That to his surprise, his Account was still restricted notwithstanding that he was never served with the fresh Restriction Notice.
- 2.11 That upon learning of this development, the Deponent decided, once again, to go and meet the Director-General of the Respondent to inquire when it would let go of his Account but he was told that the Respondent was waiting for the Report from ZRA on tax compliance and that it could not act based on the Tax Assessment

and Property Transfer Tax Certificates that he had furnished.

- 2.12 The Deponent deposed that from the time the Restriction Notice was placed on his Account on 8th September, 2022, he has been deprived use of his money, unable to do farming as he could not buy farming inputs and his health has deteriorated as he has been unable to access medical check-up and/or treatment as advised by his local doctors. To this end, he produced copies of medical recommendations that he undergoes tests and/or treatment in India or South Africa marked **"GS7"**.
- 2.13 It was further deposed that on 7th December, 2023, the Deponent's Advocates wrote to the Respondent informing the Respondent that the legal period for which a Restriction Notice can endure had ended as well as the subsequent fresh Notice issued on 7th June, 2023, for the further and final term of six months, as per the true copy of the letter of demand to the Respondent marked **"GS8"**.
- 2.14 The Deponent added that unknown to him, the Respondent, upon realizing that the mandatory prescribed period of fifteen (15) months for which Restriction Notices can last had only remained with two (2) days before it expired, had decided to place a Warrant of Seizure on the same Account. That this only came to his attention when the Warrant of Seizure was served on his Advocates on 12th December, 2023, as per

- exhibits collectively marked “GS9” being copies of the Respondent’s Affidavit in Support of Warrant of Seizure.
- 2.15 It was averred that the Respondent’s Affidavit evidence in Support of the Warrant of Seizure under Paragraph 10, stated that the sale of Bisma Mines to Grizzly Mining Limited was the subject of the investigation as there was no information to suggest that appropriate Property Transfer Tax was paid for the transaction. That this was despite the Deponent having furnished the Respondent the Tax Assessment Report and the Property Transfer Tax Clearance Certificate issued by Zambia Revenue Authority in June, 2023, conclusively indicating that the taxes were paid on the transaction.
- 2.16 He added that he verily believes as advised by his Advocates, that the decision by the Respondent to place a Warrant of Seizure on his Account, which was already a subject of a Restriction Notice, two (2) days before the expiry period of the Restriction Notice, is an abuse of power meant to deny him access to his Account in perpetuity.
- 2.17 Further that the reason a Restriction Notice has a timeframe is to ensure that an investigation is concluded in that period and that the subject of the investigation is not denied and/or precluded from enjoying his property indefinitely.
- 2.18 The Deponent stated that he had been advised by his Advocates which advice he verily believes to be true that the decision of the Respondent to place a Warrant of

Seizure on his Account upon realizing that the Restriction Notice placed on it on 7th June, 2023, had two (2) days to its expiry, is meant to circumvent the law which places a period of limitation and/or expiry.

- 2.19 It was avowed that the Respondent has no authority to place a Warrant of Seizure for purpose of investigation which purpose could have or should have been achieved by the Restriction Notice which has since expired.
- 2.20 The Deponent avowed that further to the above, the Respondent's decision to place a Warrant of Seizure two (2) days' shy of 15 months, being the maximum mandatory period for the life of Restriction Notices, is effectively meant to further the lifespan of the Restriction Notice and continue in perpetuity with investigations when the same have been terminated by operation of the law.
- 2.21 It was contended on the advice of his Advocates that the Respondent's conduct is an act of impunity, unfair, abuse of power and motivated by other ulterior motives rather than the need to do justice.
- 2.22 That the Respondent has no legal mandate to inquire into issues of Property Transfer Tax as the same is the exclusive function of and statutory power exercised by the Commissioner General of the ZRA.
- 2.23 The Deponent avowed that on the advice of his Advocates, and verily believing the same to be true, this Court has power and authority to curtail the excesses of the Respondent so as to ensure that there is no

arbitrariness, oppression and/or illegality in the conduct of the Respondent as it exercises its public law functions.

- 2.24 The Applicant filed Skeleton Arguments on 31st January, 2024, and begun by submitting that this Matter was correctly before this Court as per **Section 86** of the **Anti-Corruption Commission Act**.
- 2.25 Counsel for the Applicant submitted that as the Affidavit evidence shows, the decision being challenged stems from the purported exercise of power by the Director-General of the Respondent.
- 2.26 Counsel went on to quote **Section 61** of the **Anti-Corruption Commission Act** in its entirety, and contended that **Section 61(4)** provides the timeframe for which a Restriction Notice placed by the Respondent may endure. That it provides for an initial nine (9) months and has a further proviso empowering the Director-General of the Respondent to issue fresh Notice upon the expiry of the initial nine (9) months for a further and final six (6) months to facilitate the conclusion of an investigation.
- 2.27 Counsel submitted that as the Affidavit evidence demonstrates, the Director-General of the Respondent placed the initial Restriction Notice on the Applicant's Account on 8th September, 2022, which expired on 7th June, 2023, nine (9) months later. That a fresh and final Notice for a further six (6) months was placed on the Account on 7th June, 2023, and should have expired on

7th December, 2023. That on 4th December, 2023, the Respondent placed a Warrant of Seizure on the Applicant's Account to prolong the denial of the Applicant's access to his Account. That it is this decision and conduct which the Applicant impugns for being an act of abuse of power.

2.28 Counsel submitted that scrutiny of the Respondent's Affidavit in Support of Warrant of Seizure at Paragraphs 9 and 10 states that the reasons for the placing of the Restriction Notice on the Applicant's Account on 8th September, 2023, was for investigative purposes and the reasons for the imposition of the Warrant of Seizure which took effect on 4th December, 2023, two days before the expiry of the Restriction Notice, was because the sale of Bisma Mines to Grizzly Mining Limited is the subject of investigations as there is no information to suggest that appropriate Property Transfer Tax was paid for the transaction.

2.29 Counsel submitted that Paragraphs 6 and 10 of the Respondent's Affidavit in Support of Warrant of Seizure are crucial to the determination of the validity and propriety of the Respondent's action. It was firstly observed that the Restriction Notice was intended to facilitate investigations with a timeframe of fifteen months. Secondly, as per Paragraph 10, it was observed that the Warrant of Seizure was placed on the Applicant's Account because there were investigations going on.

- 2.30 It was Counsel's submission that the common thread between the Restriction Notice of 8th September, 2022, which ran till 7th December, 2023, and the Warrant of Seizure is that they both relate to the investigations of the Applicant's Account in relation to the transaction between Bisma Mines and Grizzly Mining Limited.
- 2.31 Counsel argued that the purpose for which the Warrant of Seizure had been placed by the Respondent on the Applicant's Account had been served and came to an end by the Restriction Notice, being investigations. That therefore, the decision by the Respondent to impose a Warrant of Seizure after realising that the Restriction Notice was coming to an end, is in effect, an extension of the Restriction Notice which had come to an end by operation of the law.
- 2.32 Counsel posed the question that can the Respondent, where it fails to conclude investigations on property subject of the Restriction Notice within the prescribed period by law, decide to place a Warrant of Seizure in order to perpetuate investigations whose time frame had lapsed under the Restriction Notice? Counsel argued that the answer is no. That such a position would be abuse of power and/or authority as it would render the timeframe for investigations spelt out under **Section 61** of the **Anti-Corruption Act** obsolete and moribund.
- 2.33 Counsel referred us to the case of **Anti-Corruption Commission Vs Bowman Chilasha Lusambo** ⁽¹⁾, wherein the High Court discussed the possible interplay

and differences between a Restriction Notice and a Warrant of Seizure and argued that where the function of these two devices required by the State can be achieved by either, then there is no need for the two to run concurrently. Further, that the only instance where a Warrant of Seizure can be placed on a property which is already a subject of the Restriction Notice is where the function required to be achieved is temporal custody or control, which cannot be achieved by a Restriction Notice.

- 2.34 It was Counsel's contention that what is clear is that the purpose for the placement of the two devices on the Applicant's Account is investigations. That there is no disclosure at all in the Respondent's Affidavit in Support of Warrant of Seizure that the reason it was placing the Warrant of Seizure is for purposes of securing a further layer of protection, that is to say, temporal custody.
- 2.35 Counsel submitted that according to the **Bowman Chilasha Lusambo** case *supra*, it is abuse of power to place a Seizure Notice on a property already the subject of the Restriction Notice when the purpose for the imposition of the Warrant of Seizure is one that could be or could have been achieved through a Restriction Notice. That such imposition is an abuse of power and clear stratagem to defeat the protection and/or safeguard afforded to persons who may be subject of investigations by the Respondent by prescribing and

limiting the time frame to a maximum of Fifteen (15) months.

2.36 Counsel contended that the timing of the imposition of the Seizure Warrant lends credence to the argument that the Respondent intended to achieve nothing out of the Warrant of Seizure other than securing more time to continue with investigations on the Account beyond the Fifteen (15) months prescribed for Restriction Notices. That the Respondent's intention was to prolong and perpetuate the period of investigation which had run out under the Restriction Notice.

2.37 It was Counsel's contention that this was not the intention of the Legislature at all. That the failure by the Respondent to conclude its investigations within the timeframe spelt out under **Section 61** of the **Anti-Corruption Commission Act**, is an abrogation of the law. Further that the imposition of the Warrant of Seizure almost at the end of the life of the Restriction Notice is a glaring abuse of power by the Respondent and that such excesses must be frowned upon by the Courts of law.

2.38 Counsel referred us to the case of **Anti-Corruption Commission Vs Serioes Farms Limited** ⁽²⁾, wherein the Supreme Court stated that it did not think it was the intention of the Legislature that investigations should be a blank cheque for a fishing expedition, and invited this Court to examine the Respondent's Affidavit evidence to its full effect in order to appreciate the

possible scope and/or complexity of the investigation and determine on the basis of reasonableness, whether such an investigation can objectively outlive the life of a Restriction Notice, which is fifteen (15) months without concluding.

2.39 Counsel submitted that in the Respondent's Affidavit in Support of Warrant of Seizure at Paragraph 10, it is stated that the on-going investigations which started on 8th September, 2022, is about whether the transaction between Bisma Investments Limited and Grizzly Mining Limited paid the necessary taxes on the said transactions. Counsel argued that this is the nature and scope of the investigation, and nothing more.

2.40 Counsel submitted that the Applicant, in his Affidavit has informed this Court that he in fact availed the Respondent with the Tax Assessment Report and the Property Transfer Tax Clearance issued to him by ZRA. Counsel posed a question that looking at the nature and scope of the Respondent's investigations, being an enquiry into whether tax was paid, and the materials at the disposal of the Respondent, is it reasonable that such a thin and linear investigation can go beyond fifteen (15) months? Counsel's response was in the negative.

2.41 It was argued that the failure to conclude such investigations is not only a blatant abuse of power, but also a grave manifestation of incompetence. It was Counsel's assertion that it would not be farfetched to

suggest that the Respondent has ulterior motives adrift of and away from the furtherance of justice. Counsel submitted that therefore, in the words of the Supreme Court in the **Anti-Corruption Commission Vs Serioes Farms Limited** ⁽²⁾ this Court should not permit the Respondent to use the alleged investigations as a blank cheque for a fishing expedition.

- 2.42 Counsel submitted that after the expiration of the initial nine (9) month Restriction Notice, the Applicant was never served with the Notice regarding the issuance of the fresh Restriction Notice and was only made aware of it when the Bank could not permit him to access his Account.
- 2.43 The question Counsel posed was the legality of the failure by the Respondent to serve the Applicant the Notice as regards the fresh Restriction Notice.
- 2.44 Counsel referred us to **Section 61(4)** of the **Anti-Corruption Act**, and submitted that the proviso permits the Respondent to issue a fresh Restriction Notice for a further term of Six (6) months. That the use of the word "fresh" in **the Act** connotes that it is a new Notice beginning its own life independent of the initial Nine (9) months but limited only to Six (6) months. Counsel contended that since a fresh Notice has its own life, its issuance must be communicated to the person being investigated.
- 2.45 In referring this Court to the position of the High Court in the case of **Kalandanya & Others Vs The Attorney**

General ⁽³⁾, wherein the Court considered **Section 15** of the **Prohibition and Prevention of Money Laundering Act**, Counsel argued that a fresh Notice must be communicated to the person being investigated. That **Section 61(2)** of the **Anti-Corruption Act** does not only apply to an initial Restriction Notice of Nine (9) months, but also applies to a fresh Restriction Notice given for a period of Six (6) months.

2.46 Counsel submitted that by parity of reasoning, **Section 60(5)** of the **Anti-Corruption Act** states:

“A person aggrieved with the directive of the Director-General issued under subsection (1) may apply to the High Court for an order to reverse or vary the directive.”

2.47 It was Counsel’s argument that based on the **Kalandanya case supra**, the Applicant could only move the High Court for reliefs aforesaid if he was served with the fresh Notice of Restriction. That consequently, the failure of the Respondent to serve the Applicant herein with the fresh Restriction Notice did not only render the said Notice illegal and invalid, but also prejudiced the right of the Applicant to make any application to the High Court as he was not aware of the status of his Account. That this failure rendered the Respondent’s act of continued restriction of the Applicant’s Account illegal and invalid.

2.48 Counsel further submitted that the Respondent does not have any legal authority or mandate to deal with

issues relating to Property Transfer Tax. That such matters are a subject of statute being the **Property Transfer Tax Act** (PTT Act). That according to the **PTT Act**, the Commissioner General has exclusive powers to deal with Property Transfer Tax issues and questions. Counsel quotes **Section 3** of the **PTT Act** as follows:

“(1) The Commissioner-General shall, subject to the direction of the Minister, be responsible for giving effect to the provisions of this Act, and shall for that purpose have all the powers conferred on the Commissioner-General by the Income Tax Act.”

- 2.49 Counsel contended that the language of the **PPT Act** is very clear as to who wields the power in relation to the Property Transfer Tax. That the **PTT Act** uses the word “shall” in vesting the power relating to Property Transfer Tax in the Commissioner General and there is no room for other law enforcement agencies to partake in this power as it is exclusive to the office of the Commissioner General.
- 2.50 Counsel submitted that the **PTT Act** has gone further to equip the Commissioner General with specific methods of recovering unpaid Property Transfer Tax and the issuance of Restriction Notices or Warrants of Seizure are not among the means prescribed by the **PTT Act** for enforcement purposes.
- 2.51 Counsel argued that as a result of the act of the Respondent herein to purport to have authority and

power to deal with Property Transfer Tax matters is not only illegal, but also constitutes usurpation of the powers granted to the Commissioner General by the **PTT Act**, as well as meddling in the affairs and exercise of power of the Commissioner General.

2.52 In conclusion, Counsel for the Applicant submitted that the decision and conduct of the Respondent has been highly oppressive and unfair to the Applicant. It was argued that therefore, it is in the interest of justice that this Court intervenes and pronounces itself on the manifest arbitrariness unleashed by the Respondent on the Applicant.

2.53 It was Counsel's prayer that this Court sets aside the Warrant of Seizure that the Respondent placed on the Applicant's Account on the ground that the Respondent acted oppressively, unfairly, and abused his powers under the **Anti-Corruption Act**, and also usurped and/or meddled in the affairs of the Commissioner General under the **PTT Act**.

3. THE RESPONDENT'S RESPONSE

3.1 The Respondent filed an Affidavit in Opposition to the Originating Summons on 20th March, 2024, and the same was sworn by **MILIMO NG'ANDU**, a Senior Investigations Officer in the Respondent's employ.

3.2 The Deponent avowed that the Respondent received two complaints dated 25th July, 2022, and 8th September, 2022, respectively alleging, among other things, that on dates unknown but between 1st January, 2022, and 30th

September, 2022, the Applicant was in possession of funds suspected to be proceeds of crime.

- 3.3 It was averred that upon perusing the said complaints, exhibited and marked "**MN1a-b**", the Deponent discovered that further details of the complaint were that the Applicant was involved in illicit activities of money laundering and being in possession of property suspected to be proceeds of crime and that he was being used as a conduit for the execution of illicit activities by politically exposed persons.
- 3.4 The Deponent avowed that his preliminary investigations showed that the Applicant has been receiving funds suspected of being proceeds of crime from Grizzly Mining Limited in the period between 20th January, 2022, and 8th September, 2022, which funds are alleged to have been payment towards the sale of Bisma Mine in which the Applicant had a proprietary interest.
- 3.5 It was avowed that upon the Deponent's recommendation, a Restriction Notice was issued by the Respondent on 8th September, 2022, against the Applicant's Dollar Account held at ZANACO, Industrial Branch, Kitwe, under Account Number 05011411200235, which Restriction Notice was duly served on the Bank. The said Restriction Notice was exhibited and marked "**GS5**" in the Affidavit in Support.
- 3.6 That having been advised by Counsel for the Respondent and verily believing the same to be true it

was deposed that the Applicant challenged the aforementioned Restriction Notice, which Order was denied and the Matter dismissed on 20th April, 2023. The copy of the Ruling from the Kabwe High Court was exhibited and marked "**MN2**".

- 3.7 The Deponent averred that following the expiration of the Restriction Notice of 8th September, 2022, on the Applicant's Bank Account, the Deponent on 7th June, 2023, recommended to the Respondent for the extension of the Restriction Notice for a further Six (6) months as provided by law, which expired on 6th December, 2023. The Restriction Notice is exhibited and marked "**MN3**".
- 3.8 It was avowed that because the investigations against the Applicant were active and ongoing, the Deponent recommended that the Respondent issues a Warrant of Seizure on the Applicant's Bank Account and the same was issued on the Applicant's Dollar Account and served on ZANACO and the Applicant's Advocates as shown in exhibit marked "**GS9**" in the Affidavit in Support.
- 3.9 It was deposed that on the advice of the Respondent's Advocates and verily believing the same to be true that the Warrant of Seizure goes beyond the effects of the Restriction Notices as is the case in this investigation. Further that the Warrant of Seizure is an investigative tool issued in the course of an investigation pursuant to the provisions of the **Anti-Corruption Act**.

- 3.10 The Deponent avowed that he recommended that the Respondent writes to ZRA requesting for all documentation relating to tax as a result of the sale of Bisma Mining, that however, he is advised by the Respondent's Advocates that the Respondent has not received any feedback yet. The letter to ZRA seeking the documents is exhibited and marked "MN4".
- 3.11 The Deponent submitted that in response to the Applicant's deposition that he availed a Tax Assessment Report and Property Transfer Clearance Certificate issued by ZRA to the Respondent, he was advised by the Respondent's Advocates that there is need for ZRA to independently avail the Respondent with information regarding the tax status of the Applicant in order to corroborate the documents that were availed to the Respondent by the Applicant.
- 3.12 It was avowed that the investigation against the Applicant is not only limited to the payment of Property Transfer Tax from the sale of Bisma Mines, but extends to possible money laundering and the manner in which the Applicant received funds from Grizzly Mining Limited as part payment for the sale of Bisma Mining Limited, a small-scale mining license to Pridegems Mining Limited, a subsidiary of Grizzly Mining Limited.
- 3.13 That contrary to the advice rendered to the Applicant by his Advocates that the Respondent does not have the mandate to inquire into issues of Property Transfer Tax, the Deponent averred that he was advised by the

Respondent's Advocates and verily believing the same to be true, that the **Anti-Corruption Act** mandates the Respondent to investigate and prosecute corruption offences as well as any other offences which may be discovered in the course of an investigation.

- 3.14 The Deponent deposed that the Respondent's Advocates advised him that on 19th September, 2023, the Applicant served on the Respondent a letter seeking to compel the Respondent to release his funds based on an alleged Presidential pronouncement. The same letter is exhibited and marked "**MN5**".
- 3.15 Further, the Deponent affirmed that on the advice of the Respondent's Advocates, and verily believing the same to be true, the Applicant was invited for interviews relating to the issues subject of the investigation and that the Respondent still requires some other independent information to prove or disprove the allegations contained in the complaints referred to above.
- 3.16 The Deponent avowed, having been advised by the Respondent's Advocates, that granting the Applicant the reliefs he seeks would prejudice the Respondent's criminal investigations as they would be rendered academic.
- 3.17 The Respondent filed Skeleton Arguments on 20th March, 2024, and begun by giving a brief background to the Matter which we have already highlighted above.

- 3.18 Counsel began by submitting on the law on Third-Party Restriction Notices and stated that **Section 61** of the **Anti-Corruption Act** makes provision for restriction on disposal of property by Third-Party. It was submitted that the Respondent herein issued a first Restriction Notice on 8th September, 2022, and subsequently, on its expiry, extended the same pursuant to the provisions of **Section 61**, in June 2023.
- 3.19 Counsel argued that contrary to the Applicant's contention that a Restriction Notice takes effect only from the date of service on the person under investigations, a Third-Party Restriction Notice, in terms of **Section 61(1); (4)(a); (5); and (6)** of the **Anti-Corruption Act** actually takes effect upon service on the Third Party.
- 3.20 It was submitted that as the Record will show, the Third-Party, being ZANACO, was duly served with both the initial and fresh Third-Party Restriction Notices. Counsel argued that although **Section 61(2)** provides that a Third-Party Restriction Notice is also served on the person under investigations, the said provision does not state that the said Notice only takes effect when served on the person under investigations.
- 3.21 That this is unlike a first party Restriction Notice issued under **Section 60** of the **Anti-Corruption Act** which is directed and served on the person being investigated. That **Section 61(4)(a)** is among the provisions that guide on when a Third-Party Restriction Notice takes

effect which is when it is served on the Third-Party. That this is fortified by the fact that **Section 61(5)** creates an offence for non-compliance with a Third-Party Restriction Notice on the part of a Third-Party who is served with a Notice under **sub-section (1)** without further reference to the service on the person under investigations under **sub-section (2)**.

3.22 It was submitted that, stated another way, the Third-Party's obligation to comply with a Third-Party Restriction Notice under risk of committing an offence arises the very moment the Third-Party is served without further recourse to service of the said Notice on the person under investigation.

3.23 Counsel buttressed his submission with the holding in the High Court case of **Godfrey Shamanena Vs Anti-Corruption Commission and Another** ⁽⁴⁾ which he stated was on fours with the case in *casu*. Counsel contended that the Restriction Notices issued in the investigation relating to the Applicant were legal and rightly issued pursuant to the provisions of the **Anti-Corruption Act** in the course of an active investigation. Further that there is nothing improper about issuing a Third-Party Restriction Notice to a Third-Party holding property on behalf of a person under investigations such as the Applicant.

3.24 Counsel submitted that a Restriction Notice is an investigative tool with the effect of maintaining the *status quo* of the property in issue. That therefore, where

an investigation is on-going, and it becomes necessary to preserve the property, the Director-General of the Respondent has the power to restrict property as provided for by **Sections 60 and 61** of the **Anti-Corruption Act**.

3.25 Counsel referred us to the case of **Anti-Corruption Commission Vs Barnnet Development Corporation Limited** ⁽⁵⁾ wherein the Supreme Court held as follows:

“The argument of the appellant, under the first ground of appeal, is that a criminal investigation is, by its nature, conducted in secrecy and as such there cannot be full disclosure of the investigations. As far as the appellant is concerned, the affidavit evidence filed before the lower Court showed that there was an investigation going on relating to the manner Stand No. 6955, Lusaka, was acquired by the respondent.

On the other hand, it is contended by the respondent that the appellant has not provided clear evidence to sustain the issuance of the restriction notice under Section 24 (7) of the Act. As far as the respondent is concerned, there is no evidence on the identity of the person being investigated and as such the learned trial Judge is said to have exercised his discretion properly on review when he ordered the

withdrawal of the restriction notice against Stand No. 6955, Lusaka.

The power to issue a restriction notice by the Director General of the appellant commission under Section 24 (1) of the Act is not in dispute. Whether the Director General has power to issue a fresh restriction notice or simply renew the one already in force is a matter that will be considered in the second ground of appeal.

The power of the appellant to issue a restriction notice has been challenged for lack of supportive evidence. To appreciate the extent of the authority vested in the Director General, we propose to reproduce Section 24 (1) of the Act, which is couched in the following terms:-

24 (1) "The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Director-General".

By the foregoing provision and as conceded by counsel for the respondent, the “investigation and prosecution” of the person for an offence under the Act need not exist at the same time for a restriction notice to issue. It was, therefore, a misdirection for the learned trial Judge to have come to the conclusion that there should have been both investigation and prosecution for a restriction notice to be issued.

In this appeal case, the basis for issuing a restriction notice was that an investigation had been launched against the respondent in the manner it allegedly acquired Stand No. 6955, Lusaka. This was the allegation and the affidavit in opposition filed by the appellant commission, clearly outlined the allegation, consistent with a corrupt act, that needed to be investigated. (Emphasis theirs)

3.26 It was Counsel's submission that it can be seen from the Applicant's Affidavit in Support as well as the Respondent's Affidavit in Opposition that the contested Restriction Notices both of 8th September, 2022, and June, 2023, have since expired. That it can also be noted that considering the on-going investigation against the Applicant, the Respondent has subsequently caused to be issued a Warrant of Seizure as of 15th November, 2023.

- 3.27 It was Counsel's contention that this Court should not entertain this claim to the extent that the Restriction Notices aforementioned have both expired and have been overtaken by a Warrant of Seizure.
- 3.28 With regards to the law on Warrants of Seizure, Counsel submitted that **Section 58(1)** of the **Anti-Corruption Act** makes provision for seizure of property under a Warrant of Seizure. That from the definition of "seizure" under **Section 2** of the **Anti-Corruption Act**, which is temporarily prohibiting the transfer, conversion, disposition or movement of any property or temporarily assuming the custody or control of property or temporarily assuming the custody or control of property on the basis of an order issued by a court or a notice by the Director-General, the same can be issued even without the involvement of court.
- 3.29 It was submitted that just like a Restriction Notice, a Warrant of Seizure is an investigative tool which however, goes beyond the effect of a Restriction Notice.
- 3.30 Counsel submitted that the Applicant has argued that the Respondent acted illegally and in abuse of power when the Warrant of Seizure was issued on the Applicant's Bank Account held at ZANACO Bank. It was Counsel's contention that there has been no illegality as the Warrant of Seizure was rightly issued following the expiration of the Restriction Notice aforementioned.
- 3.31 It was argued that the Applicant has misapprehended the provisions of **Section 61** of the **Anti-Corruption**

Act by arguing that the Respondent cannot proceed to issue a Warrant of Seizure on the basis that the law under **Section 61** provides for a life span of the Notices and upon expiry, issuance of any other instrument is illegal.

- 3.32 Counsel submitted that the Applicant has further misapprehended the Judgment in the case of **Anti-Corruption Commission Vs Bowman Chilasha Lusambo** ⁽¹⁾ and cited the holding of the Judgment in part and not as a whole.
- 3.33 Counsel drew our attention to the holding of the Judgment at pages 26 and 27 under Paragraph 8.12 of the Judgment which was correctly cited by the Applicant, but that the Applicant has wrongly applied the case, and submitted that the High Court held that a Warrant of Seizure goes beyond what a Restriction Notice can do, and therefore, it is possible for a Warrant of Seizure to follow a Restriction Notice in order to do what a Restriction Notice cannot do, which is the continued preservation of the property by taking temporary custody or control.
- 3.34 Counsel submitted that the distinction between the effects of a Warrant of Seizure and a Restriction Notice under the **Anti-Corruption Act**, is that a Warrant of Seizure empowers an authorised officer to take temporary custody of the seized property whereas a Restriction Notice only grants controlled rights to the Director-General of the Respondent Institution while

the affected person remains in custody of the property. That this was the position held in the case of **Anti-Corruption Commission Vs Barnnet Development Corporation Limited** ⁽⁵⁾.

3.35 Counsel argued therefore, that the Warrant of Seizure issued in this matter, was rightly issued, and there is no legal basis demonstrated by the Applicant upon which this Court can be moved to set aside the said Warrant of Seizure.

3.36 With regard to the argument that the Respondent does not have the authority and mandate to deal with issues relating to Property Transfer Tax, it was Counsel's submission that the Applicant is arguing from a vacuum as he has not cited any provision of the law which precludes the Respondent from investigating tax offences.

3.37 Counsel argued that the Respondent is empowered by **Section 6(1)** of the **Anti-Corruption Act** to initiate, receive and investigate any offences which may be discovered in the course of an investigation. That this provision allows the Respondent Institution to investigate offences under any written law. That it can be noted from the documents on Record that this issue relates to an active investigation against the Applicant, therefore, this matter is still at investigations stage. It was Counsel's contention that these Proceedings cannot be used to curtail an ongoing investigation against the Applicant.

- 3.38 Counsel submitted that civil proceedings cannot curtail criminal investigations. It was submitted that the Applicant has made several claims among which he claims that the Warrant of Seizure should be set aside. Counsel reiterated that the criminal investigations under which the said property is subject have not been concluded and are still on-going and that the Applicant cannot use these Proceedings to stop criminal investigations against him.
- 3.39 Counsel argued that the Applicant has not demonstrated any illegality on the part of the Respondent in issuing the Warrant of Seizure. That in the absence of malice, bad faith and unreasonableness, this Court has no jurisdiction to challenge the discretion of an Investigating Authority. Further that the Respondent is not obligated to disclose the stage of investigations, and that it is also worth noting that this Court is restricted to what is on Record considering the secret nature of criminal investigations.
- 3.40 Counsel submitted that the case in *casu* has similar facts as those in the case of **C&S Investments Limited, Ace Car Hire Limited, Sunday Maluba Vs The Attorney General** ⁽⁶⁾ wherein the Supreme Court found all grounds of appeal against a Warrant of Seizure to have failed as the investigations were on-going and the civil application could not circumvent criminal investigations.

- 3.41 Counsel submitted that on the strength of the foregoing, it was his prayer that the Applicant's Application be dismissed as the Applicant's case lacks merit and is founded on misconception of the law. That granting the Applicant's Application will aid the Applicant with circumventing criminal investigations.
- 3.42 Counsel submitted that with respect to the case of **Kalandanya and Others Vs The Attorney General and Others** ⁽³⁾, that this case was correctly decided on its own facts as it related to a Seizure Notice issued under the **Prohibition and Prevention of Money Laundering Act**. That the said piece of legislation has no comparable provision to **Section 61** of the **Anti-Corruption Act** on a Third-Party Restriction Notice taking effect upon service on the Third-Party as was the case in the present Matter.
- 3.43 In conclusion, Counsel's prayer was that this Court finds in favour of the Respondent and uphold the Third-Party Restriction Notices that have been overtaken by the Warrant of Seizure subsequently correctly issued. Further that the Respondent is within its powers to inquire into any tax offences in the event that any are discovered. It was Counsel's further prayer that this Application be dismissed with costs to the Respondent.

4. HEARING

- 4.1 The Matter came up for Hearing on 26th March, 2024, and Counsel for both the Applicant and the Respondent were present.
- 4.2 Counsel for the Respondent, submitted that he would be relying on the documents already filed and before the Court, but however, would be briefly augmenting the contents of the same. Counsel's augmentations however, covered issues already addressed in the Affidavit and Skeleton Arguments in Support of their Application. We have noted the same and will not repeat them here.
- 4.3 The Respondent equally submitted that they would rely on the documents filed in Opposition and also wished to briefly augment and respond to the oral submissions made by Counsel for the Applicant. We also note here that the Respondent's augmentations are in response to the Applicant's submission and are contained in their Affidavit and Skeleton Arguments in Opposition. We have taken note of them and will not repeat them here.

5. CONSIDERATION AND DECISION OF THE COURT

- 5.1 Having perused the documents filed by both Parties in Support and in Opposition, and heard their *viva voce* augmentations at the Hearing, it is our view that there are three issues for this Court to determine. These are:
- 1. Whether the failure by the Respondent to serve the fresh Restriction Notice, issued on 7th June,***

2023, on the Applicant renders the said Notice null and void;

2. Whether the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account, which was already a subject of a Restriction Notice, just two days before the said Notice was due to expire was done in bad faith, oppressive and an abuse of the Respondent's power and authority; and

3. Whether the Respondent has the power to investigate and prosecute offences under the Property Transfer Tax Act (PTT Act).

5.2 We shall proceed to deal with each issue above *ad seriatim*.

5.3 *Whether the failure by the Respondent to serve the fresh Restriction Notice, issued on 7th June 2023, on the Applicant renders the said Notice null and void.*

5.4 The Applicant submitted that after the expiration of the initial Restriction Notice of nine (9) months, the Applicant was never served with the fresh Restriction Notice and was only made aware of it when ZANACO could not permit him to access his account.

5.5 Counsel questioned the legality of the Respondent's omission to serve the Applicant the fresh Restriction Notice and argued that such omission went against **Section 61(2)** of the **Anti-Corruption Act**. Counsel contended that based on the provisions of **Section 61(5)**

of the **Anti-Corruption Act**, the Applicant could only move the High Court for the reliefs therein if he was served with and consequently had knowledge of the fresh Restriction Notice. That such failure to serve the Notice on the part of the Respondent rendered the said Notice illegal and invalid.

5.6 In response, Counsel for the Respondent submitted that the Third-Party, being ZANACO in *casu*, was served with the fresh Third-Party Restriction Notice. Counsel went on to argue that although **Section 61(2)** of the **Anti-Corruption Act** provides that Third-Party Restriction Notices be also served on the person being investigated, this provision does not state that the said Notice only takes effect when served on the person being investigated. That the Notices only take effect when the Third-Party, being ZANACO, is served thereby placing an obligation on the Third-Party to comply with the Restriction Notice under risk of committing an offence.

5.7 We will begin our consideration of the arguments presented by the Parties by quoting the impugned **Section 61** of the **Anti-Corruption Act** which covers restriction on disposal of property by a Third-Party as follows:

“(1) The Commission may, where it has reasonable grounds to believe that a Third-Party is holding any property, including money in a bank account for, or on behalf of, or to the order of a person who is under

investigation, by notice, in writing, under the hand of the Director-General, serve a notice on the Third-Party directing that the Third-Party shall not dispose of, or otherwise deal with, any property specified in the notice.

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

(3) The Commission may, in issuing a notice under this section impose such conditions as it may determine.

(4) A notice issued under subsection (1) shall—

(a) in respect of an investigation within the jurisdiction, have effect from the time of service upon the person and shall continue in force for a period of nine months or until cancelled by the Director-General, whichever is earlier; and

b) in respect of an investigation outside the jurisdiction, have effect from the time of service upon the person and shall continue in force for a period of twelve months or until cancelled by the Director-General, whichever is earlier:

Provided that the Director-General may issue a fresh notice upon the expiry of the previous one for a further final term of six months to facilitate the conclusion of an investigation.

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

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

(7) Subsections (5), (6) and (7) of section sixty apply to this section.”

5.8 A perusal of the submissions on Record show that for the Applicant, the issue was never when Restriction Notices took effect, but rather that the fresh Restriction Notice was only served on the Third-Party, being ZANACO, and not on the person being investigated, being the Applicant herein, contrary to **Section 61(2)** of the **Anti-Corruption Act**.

5.9 This Court dealt with both these issues in the case of **Savenda Systems Limited Vs The Anti-Corruption Commission** ⁽⁷⁾ and found at J31 as follows:

“7.25 It is therefore our considered view that the Respondent’s failure to serve the Third-Party Restriction Notice on the Applicant, being the person under

investigation, as mandated by Section 61(2) of the Act renders them irregular, null and void ab initio for want of service and we order that the Restriction Notice on the Applicant's USD Dollar project account number 5727652500219 held with ZANACO be lifted with immediate effect."

5.10 We stand firmly behind our finding above. It is therefore, our considered view that the fresh Restriction Notice issued on 7th June, 2023, is null and *void ab initio* for want of service on the Applicant, being the person being investigated.

5.11 ***Whether the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account, which was already a subject of a Restriction Notice, just two days before the said Notice was due to expire was done in bad faith, oppressive and an abuse of the Respondent's power and authority.***

5.12 Counsel for the Applicant submitted that **Section 61(4)** of the **Anti-Corruption Act** provides the timeframe for which a Restriction Notice may endure. That the Director-General of the Respondent may issue a Restriction Notice for an initial Nine (9) months and may issue a fresh Restriction Notice upon the expiry of the Nine (9) months for a further and final period of Six (6) months to facilitate the conclusion of investigations. That the fresh Restriction Notice for a further Six (6) months was placed on the Applicant's Account with

ZANACO on 7th June, 2023, and was due to expire on 7th December, 2023. That however, the Respondent placed a Warrant of Seizure on the said Account two days before the expiry of the fresh Restriction Notice.

- 5.13 Counsel stated that both the Restriction Notice and the Warrant of Seizure were placed on the Applicant's Account for purposes of investigations therefore, the imposition of a Warrant of Seizure when the Restriction Notice was due to expire is in effect an extension of the Restriction Notice which had come to an end by operation of the law.
- 5.14 It was Counsel's argument that based on the function of the Restriction Notices and Warrant of Seizure, there was no need for the two to run concurrently for the same purpose, that is investigations. That the only instance where a Warrant of Seizure can be placed on a property which is already the subject of a Restriction Notice is where the function required to be achieved is temporal custody or control, which cannot be achieved by a Restriction Notice. That it was never the intention of the Legislature that investigations should be a blank cheque for a fishing expedition.
- 5.15 In response, Counsel for the Respondent submitted that because investigations against the Applicant were active and on-going, the Respondent issued a Warrant of Seizure on the Applicant's Account as this not only goes beyond the effects of a Restriction Notice, but is also an investigative tool issued in the course of an investigation

pursuant to the provisions of the **Anti-Corruption Act**. That a Restriction Notice so issued is an investigative tool with the effect of maintaining the *status quo* of the property in issue and is necessary to preserve the property.

- 5.16 It was submitted that due to the on-going investigations against the Applicant, the Respondent caused to be issued a Warrant of Seizure on 15th November, 2023.
- 5.17 That based on the definition of “seizure” under **Section 3** of the **Anti-Corruption Commission Act**, the Respondent, by issuing the same, was assuming custody or control of the property unlike a Restriction Notice which allows the person being investigated, through the office of the Director-General and with his permission, to access the said property.
- 5.18 It was submitted that other than the above distinction, which goes beyond the effect of a Restriction Notice, a Warrant of Seizure and a Restriction Notice are nonetheless both investigative tools and that there is no illegality in the issuance of the Warrant of Seizure following the expiration of the fresh Restriction Notice.
- 5.19 We note that the Director-General, under **Section 11** of the **Anti-Corruption Act** may authorise in writing, any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under the Act. **Section 52** clearly states that the Director-General shall, upon receipt of a complaint or by its own initiative, examine each alleged corrupt practice and

decide whether or not an investigation in relation to the allegations is warranted.

5.20 Further, **Section 60** and **61** of the **Anti-Corruption Act** speaks to Restriction Notices, either on the first person, that is the person being investigated, or the third person, being the person or entity holding the property on behalf of the person being investigated respectively.

5.21 When it comes to Seizure of property, **Section 58(1)** of the **Anti-Corruption Act** states as follows:

“Where in the course of an investigation into an offence under this Act, an officer has reasonable grounds to suspect that any movable or immovable property is derived or acquired from corrupt practices, is the subject matter of an offence or is evidence relating to an offence, the officer shall, with a warrant, seize the property.”

5.22 **Section 3** of the **Anti-Corruption Act** defines “seizure” as follows:

“...means temporarily prohibiting the transfer, conversion, disposition or movement of any property or temporarily assuming the custody or control of property on the basis of an order issued by a court or a notice by the Director-General;”

5.23 What is clear from the above provisions, is that the Respondent has the legal right to seize or restrict property belonging to a person under investigations or

whose property is suspected to have been derived or acquired from corrupt practices, is the subject matter of an offence or whose property is evidence relating to an offence under **Part IV** of the **Anti-Corruption Act**. It is within the rights and powers of the Respondent to either issue a first, or Third-Party Restriction Notice, or Warrant of Seizure on the property of a person being investigated.

- 5.24 Where property is restricted under **Sections 60** and **61** of the **Anti-Corruption Act**, the lifespan of both the initial and fresh Restriction Notices is prescribed and further, both Sections instruct that the person under investigations and the Third-Party shall not dispose of, or otherwise deal with, any property specified in such notice without the consent of the Director-General.
- 5.25 A Warrant of Seizure, in and of itself, can be issued by the Respondent either as the first port of call in an investigation of corrupt practices, or indeed at any time including following the expiration of either the initial or fresh Restriction Notice. A Warrant of Seizure, once issued, not only temporarily prohibits the transfer, conversion, disposition or movement of any property but also allows the Respondent to temporarily assume custody or control of property.
- 5.26 It is our considered view that Restriction Notices and a Warrant of Seizure are investigative tools used by the Respondent, but however, have very different effects.

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- 5.27 Property subjected to a Restriction Notice, issued under either **Section 60** or **61** of the **Anti-Corruption Act**, cannot be dealt with, transferred or disposed of without the consent of the Director-General of the Respondent. This was the guidance of the Supreme Court in the case of **Anti-Corruption Commission Vs Barnnet Development Corporation Limited** ⁽⁵⁾. Therefore, a person being investigated and whose property is subject to a first, or Third-Party Restriction Notice, can, with the consent of the Director-General, deal with, transfer or dispose of his or her property.
- 5.28 On the other hand, a Warrant of Seizure issued under **Section 58**, as read with the definition of “seizure” under **Section 3** of the **Anti-Corruption Act** does not allow a person being investigated and whose property has been seized to deal with, transfer or dispose of his or her property. A Warrant of Seizure goes further and states that the Respondent assumes temporal custody or control of property and the person under investigation has no access to his or her property at all.
- 5.29 In reference to Restriction Notices and a Warrant of Seizure under the **Anti-Corruption Act**, in the case of **Anti-Corruption Commission Vs Bowman Chilsha Lusambo** ⁽¹⁾ this Court stated as follows:

“What is clear from the above provisions of the law is that both a Restriction Notice and a Warrant of Seizure are intended to protect the interests of the State in a property reasonably

suspected to be acquired from corrupt practices. However, what differs is the degree of protection. While both the Restriction Notice and a Warrant of Seizure restrict or prohibit the dealing, disposal, conversion or movement of the subject property, a Warrant of Seizure goes a step further by granting the State temporal custody or control of the subject property.

Emanating from the foregoing, our view is that while a Restriction Notice and a Warrant of Seizure serve the same purpose of protecting the State's interest in properties suspected to be acquired or derived from corrupt practices, they have a different degree of protection. Thus, a Restriction Notice cannot be issued on a property subject of a Warrant of Seizure as all the functions of the Notice of Seizure can be achieved through a Warrant of Seizure. On the other hand, a Warrant of Seizure can still be issued on a property that is subject of a Restriction Notice in order to have temporal custody or control of the subject property, which is not possible through a Restriction Notice.

Further, had the Legislature intended the two documents to serve the same purpose, it could not have provided for them in separate provisions.”

5.30 Based on the foregoing, it is our considered view that a Warrant of Seizure can be placed on property that is the subject of a valid and on-going Restriction Notice. Therefore, the Respondent's actions in issuing the Warrant of Seizure on the subject property was not only legal, but cannot be said to have been done in bad faith, nor was it oppressive and an abuse of power and authority.

5.31 ***Whether the Respondent has the power to investigate and prosecute offences under the Property Transfer Tax Act (PTT Act).***

5.32 Counsel submitted that in the Respondent's Affidavit in Support of Warrant of Seizure at Paragraph 10, it is stated that the ongoing investigation which started on 8th September, 2022, is about whether the necessary taxes were paid on the transaction between Bisma Investment Limited and Grizzly Mining Limited. It was submitted that the Applicant took it upon himself to avail the Respondent with the Tax Assessment Report and the Property Transfer Tax Clearance issued to him in relation to the said transaction, but that this did not sway the Respondent who disregarded the documents and continued to investigate the issue to date.

- 5.33 It was submitted that the Respondent does not have any legal authority or mandate to deal with issues relating to Property Transfer Tax, which Counsel contended, falls under the exclusive power and authority of the Commissioner General ZRA.
- 5.34 In response, Counsel for the Applicant argued that under **Section 6(1)** of the **Anti-Corruption Act**, the Respondent is empowered to initiate, receive and investigate any offence under any written law which may be discovered in the course of investigations as in the case in *casu*.
- 5.35 Counsel submitted that the Applicant cannot use these Proceedings, being civil proceedings, to curtail an ongoing criminal investigation against the Applicant. Counsel submitted that the Applicant has failed to demonstrate any illegality on the part of the Respondent in issuing the Warrant of Seizure. That in the absence of bad faith, malice, unreasonableness, this Court has no jurisdiction to challenge the discretion of an Investigating Authority.
- 5.36 **Section 6(1)(b)** of the **Anti-Corruption Act** is self-explanatory in relation to the Applicant's issue herein. It states that the functions of the Commission, the Respondent herein, *inter alia*, are to:

“initiate, receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute—

(i) offences under this Act; and
(ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under this Act.” (Emphasis ours)

5.37 Not only does **Section 89** give the **Anti-Corruption Act** supremacy over all other written laws, but **Section 6(1)(b)** above allows the Commission investigate other offences under any written law outside the **Anti-Corruption Act**. This includes offences under the **PTT Act** and the **Income Tax Act**.

5.38 It is therefore our considered view that the Respondent has the power to investigate and, subject to the directions of the Director of Public Prosecution, prosecute offences under the **PTT Act**.

5.39 It is our further considered view that the Respondent issued a Warrant of Seizure against the Applicant’s property as part of their on-going criminal investigations and we agree with the Respondent that this Application cannot be used to circumvent the said criminal investigations. We are supported by a plethora of decided cases including **C&S Investment Limited; Ace Car Hire Limited, Sunday Maluba Vs The Attorney General** ⁽⁶⁾ wherein the Supreme Court stated as follows:

“As we understand it, the fourth ground of appeal attacks the learned Judge’s conclusion that there were no cogent reasons to arrest

criminal investigations by the Respondent. The Respondent's position, according to his affidavit in opposition, was that the seizure of the goods and the freezing of accounts were carried out during the course of criminal investigations. Clearly, any Order to release the property would have an impact on the criminal investigations. We do not find that it was farfetched for the Judge to conclude, in these circumstances, that there was an attempt, through these civil proceedings, to arrest criminal investigations."

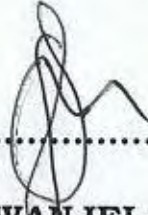
6. CONCLUSION

- 6.1 In view of the foregoing, we find that the failure by the Respondent to serve the fresh Restriction Notice on the Applicant renders the it null and void. Therefore, the Applicant's first issue raised succeeds.
- 6.2 We find that the decision by the Respondent to issue a Warrant of Seizure on the Respondent's Account was not done in bad faith, oppressive and an abuse of the Respondent's power and authority. Therefore, the Applicant's second issue raised fails.
- 6.3 We find that the Respondent has the power to investigate and prosecute offences under the **Property Transfer Act**. Therefore, the Applicant's third issue raised fails.
- 6.4 Each Party to bear its own costs.

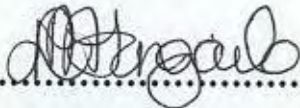
6.5 Leave to appeal is granted.

SIGNED, SEALED AND DELIVERED AT LUSAKA

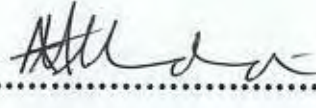
THIS 21st DAY OF JUNE 2024



.....
**S. M. WANJELANI
HIGH COURT JUDGE**



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



.....
**A. MALATA-ONONUJU
HIGH COURT JUDGE**

