

CR NO: 2SPJ/MISS/01/2022

**IN THE SUBORDINATE COURT OF THE FIRST CLASS  
FOR THE LUSAKA DISTRICT**

**HELD AT LUSAKA**

**IN THE MATTER OF SEIZURE OF PLOT: F/609/E/44/B/3,  
F/609/E/44/B/8,  
F/609/E/44/B/9**

(Criminal jurisdiction)

**BETWEEN:**

**THE ANTI-CORRUPTION COMMISSION**

**AND**

**BOWMAN CHILOSHA LUSAMABO**

**BEFORE MAGISTRATE: ALBERT K. MWABA**

For the Applicant: **E. Mbewe** the acting Chief Legal Officer at  
Anti-Corruption Commission.

For the Respondent: **M. Zulu** of Makebi Zulu Advocates.

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**RULING**

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**Cases referred to:**

**Legislation referred to:**

1. Anti-Corruption Commission Act no 3 of 2012.
2. The Criminal Procedure Code Chapter 88 of the Laws of Zambia.
3. The Forfeiture of Proceeds of Crime Act no 19 of 2010

**Authority referred**

1. Bryan A Garner, **Black's Law Dictionary**. Ninth Edition,  
(West Publishing Company, 1990)

This is a ruling on the Respondent's application to set aside the warrant of seizure issued by this court for irregularity.

Facts are that on 13<sup>th</sup> April, 2022 the Anti-Corruption Commission obtained a warrant of seizure in respect of the property in question pursuant to section 58(1) of Anti-Corruption Act no 3 of 2012 of the Laws of Zambia. On 22<sup>nd</sup> April, 2022, Mr. Bowman Chilosha Lusambo through his lawyers applied ex parte to set it aside for irregularity, but the state raised a preliminary issue which was accordingly dealt with in the earlier ruling.

In arguing the Respondent's application, Counsel Zulu pressed reliance on the affidavit in support and submitted that the property in issue was a residential and matrimonial property of one Mr. Bowman Chilosha Lusambo. He added that the same properties were under a restriction notice issued by the Anti-Corruption Commission Director General, which disabled the Applicant from disposing them of. He stated that the action by the state to seize the property and evict the Applicant was excessive, and amounted to forfeitures before the conclusion of the matter. He stated further that the property in issue was subject of an inquiry in the matter between the People v Bowman Chilosha Lusambo and Nancy Manse Lusambo at Lusaka before Magistrate Hamaunda.

He stressed that the so called warrant of seizure did not conform to the form that a warrant should take but that of an affidavit commissioning. It was not directing any officer to seize any property. Therefore, it did not qualify to be referred to as an order of the Court as a warrant should be. He therefore prayed that the

same document which prima facie is a court order, be set aside, as effectively there is no directive to seize any property.

Counsel Mbewe argued for the state that the Respondent first ground that there was no originating summons as provided in section 86 of Anti-Corruption Act no 3 of 2012 of the Laws of Zambia, pursuant to which the seizure warrant was sought failed. This according to him applied to situations not specifically provided for, the position that the court had taken. This effectively defeated the ground upon which the warrant of seizure could be assailed.

He called in aid section 35 of the Forfeiture of Proceeds of Crime Act no 19 of 2010 which covers the power of search. He stated that an officer may seize property in course of an investigation.

He averred that the question for consideration was whether a warrant of seizure could be set aside for being defective in material particular. But that looking at the ex parte summons, there was no application to set aside the warrant of seizure for being defective in material particular. Therefore, Counsel Zulu's attempt to sneak in such a ground by referring to the content of the affidavit was irregular.

In reply to the states response, Counsel Zulu stated that the second ground of the Respondent application was that the affidavit was not filed into court. Therefore, to suggest that because the first ground failed, the second one also failed was untruthful. He stated that the warrant of seizure in question was not supported by an affidavit, in that the same affidavit in support was not filed into court. Additionally, he stated that what was purported to be a

warrant of seizure amounted to an affidavit, in that it contained no order or directive of the Court.

With regards section 35 and 36 of the Forfeiture of Proceeds of Crime Act no 19 of 2010, he argued that the sections applied where, after obtaining a search warrant, an officer during search comes across an item which in his view should be seized. In the present case, there was no warrant pursuant to which the seizure was conducted. Therefore, there was no court order restraining or directing anyone to do anything.

These were the entire submissions in this case. I have considered them purposely and in my view, the questions that engendered are that:

1. Was there ground upon which the application to assail the warrant of seizure was premised;
2. Can a warrant of seizure be set aside for not being directive; and
3. Can a warrant of seizure be issued where there is a restriction notice issued the Director General Ant-Corruption Commission?

I opt to deal with the questions as outlined above.

On the question that the application to set aside the warrant of seizure had no premises upon which it was based. Counsel for the state contended that following the ruling of Court that an officer applying for warrant of seizure ought not to file an originating summons, then there was no ground upon which the Respondent's application was premised. The Respondent's counsel stated that

the failing of one ground, did not entail that even the other one also collapsed. He said the other ground was that the affidavit in support of the warrant of seizure was not filed in court. Therefore, the warrant of seizure was not supported by an affidavit as required by law.

I critically analyzed the ex parte summons on the file and found that one of the ground stated by the Respondent, is that the affidavit was not filed in Court. This ground did not fail, hence only one ground collapsed and not the entire application.

The other question that begs for answer, can a warrant of seizure be set aside for not being directive?

Counsel for the Respondent argued that the warrant of seizure was not directing any officer to seize any property. Therefore, it did not qualify to be referred to as an order of the court. Whereas, counsel for the state contended that looking at the ex parte summons, there was no application to set aside the warrant of seizure on the ground that it was defective in material particular.

Suffice to state that order 5 rule 11 of the Subordinate Court rules Chapter 28 of Laws of Zambia, is instructive on filing of an affidavit; it provides that:

*Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognized for any purpose in the court.*

The **Black Law dictionary** defines the term file as:

*To deliver a legal document to the court clerk or record custodian for placement into the official record*

I have examined an affidavit in support of the warrant of seizure and it is clear as day that it has no registry date stamp, meaning that it was just brought for signing without being filed in Court. Given that the provision cited above is couched in mandatory term, it goes to say that the warrant of seizure was not supported by an affidavit. Therefore, it was irregularly issued by this court as it was not filed in court as provided for under order 5 rule 11 of the Subordinate Court rules Chapter 28 of Laws of Zambia.

On the question whether or not a warrant of seizure can be set aside for not conforming to the form that it should take. Counsel for the state contended that a warrant of seizure can only be set aside if it was defective in material particular. He called in aid section 35 and 36 of the Forfeiture of Proceeds of Crime Act no 19 of 2010.

On the other hand, Respondent's counsel argued that the above provision augmented the Respondent's position that the warrant was defective as it was not directive.

The warrant of seizure in question read as follows:

**The Republic of Zambia.**  
**ANTI-CORRUPTION COMMISSION**  
**Warrant of seizure under section 58(1) of the Anti-Corruption Act No 3 of 2012**

In the Subordinate of the 1<sup>st</sup> class Holden at Lusaka.

I ...siwakwi Christopher ...Anti-Corruption Commission officer stationed at Lusaka, being first duly sworn, complains that on 3<sup>rd</sup> Day of January, 2022, the following properties being number F/609/E/44/B/3, F/609/E/44/B/8, and F/609/E/44/B/9, in

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Lusaka were acquired and constructed by **Bowman Chilasha Lusambo** using suspected proceeds of crime and that he has reasonable cause to suspect, and does in fact suspect that the said property is registered in the name of **Washington Mwenya Zulu**. The said Siwakwi Christopher deposes and says that the properties in question at Plot F/609/E/44/B/3, F/609/E/44/B/8, and F/609/E/44/B/9, are tainted properties in relation to a serious offence.

.....Signed.....  
Signature of the Applicant

Taken at and sworn at .....this .....day.....2022.

Before me,. Signed and date stamped 13/04/2022  
Honourable Magistrate

Having looked at the warrant of seizure in question, suffice to state that in order to effectively answer the questions above, it is imperative to refer to what the term warrant means.

The **Black Law dictionary** defines Warrant as:

*'A writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure'*

Whereas seizure is defined in section 3 Anti-Corruption Act no 3 of 2012 of the Laws of Zambia, as:

*"Seizure" 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.*

Section 35 of the Forfeiture of Proceeds of Crime Act no 19 of 2010, which the state referred to provide that:

*A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.*

In light of the above, the document that was signed by this Court to be a warrant of seizure is just a mere statement that the properties were tainted, but not a directive to any law enforcer to seize the property in question. Effectively, it does not serve the purpose for which it was intended, therefore being defective in material particular.

The other question that begs for answer, can a warrant of seizure be issued where there is a restriction notice in force?

The Respondent's counsel stated that the properties in question were already under a restriction notice issued by the Anti-Corruption Director General when the court issued the warrant of seizure in question. Counsel for the state never countered this issue, and thus, it goes without saying that a restriction notice was in force at the time the warrant of seizure was issued.

From the definition of seizure under the Anti-Corruption Act no 3 of 2012, it is clear that both warrant and restriction notice have same effect. Therefore, applying for a warrant of seizure on a properties subject of a restriction notice was nothing but an abuse of process.

In sum, the warrant of seizure was irregularly issue as an affidavit in support was not filed in court as required by law. To cap it all,

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the said warrant of seizure does not serve the purpose for which it was intended. And even if it did, it could still not be in order to have both warrant of seizure and restriction notice on the same properties in force at the same time.

For the foregoing, the application to set aside the document which prima facie is warrant of seizure is allowed. Thus, the document which was issued by this court as a warrant of seizure on 13<sup>th</sup> April, 2022, **BE** and **IS HEREBY SET ASIDE**.

Each part to bear its own costs.

Parties informed of their right of appeal.

**Delivered** in Chambers Court at Lusaka this **19<sup>th</sup>** day of **May, 2022**

  
**ALBERT KAMIJI MWABA**  
**RESIDENT MAGISTRATE**

