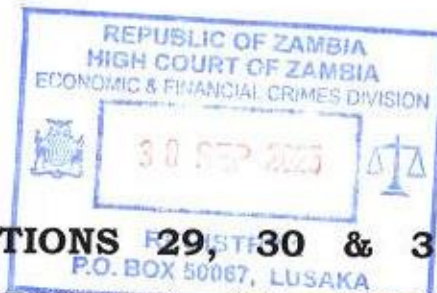


**IN THE HIGH COURT OF ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES REGISTRY
HOLDEN AT LUSAKA**

2025/HPEF/002

(Civil Jurisdiction)



**IN THE MATTER OF: SECTIONS 29, 30 & 31 OF THE
FORFEITURE OF PROCEEDS OF
CRIME ACT NO. 19 OF 2010;**

**IN THE MATTER OF: SECTION 309A OF THE PENAL CODE,
CHAPTER 87 OF THE LAWS OF
ZAMBIA; AND**

**IN THE MATTER OF: SECTION 71 OF THE FORFEITURE OF
PROCEEDS OF CRIME ACT NO. 19 OF
2010.**

BETWEEN:

**THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT
AND**

IN RE PROPERTY:

**FNB ACCOUNT NUMBER 62908248463 THE SUM OF ZMW
8,142,215.04**

**SMOLENSKI TRADING LCC (formerly INTERESTED PARTY
Known as EPITYCHIA GENERAL
TRADING LLC)**

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, P.
K. YANGAILO AND A. MALATA-ONONUJU, ON 30TH
SEPTEMBER, 2025, IN CHAMBERS.**

For the Applicant: Ms. M. Kapambwe-Chitundu, Deputy
Chief State Advocate – National
Prosecution Authority.

For the Interested Parties: Mr. K. M. G. Chisanga and Mr. M.
Siame – Messrs. KMG Chisanga
Advocates.

JUDGMENT

**P. K. YANGAILO J., DELIVERED THE JUDGMENT OF THE
COURT.**

CASES REFERRED TO:

1. *Sydney Mwansa and Director of Public Prosecution – Appeal No. 276 of 2021;*
2. *Kumarnath Mohunram & Shelgate Investments CC v The National Director of Public Prosecutions, BOE Bank Limited & The Law Review Project (As Amicus Curiae) – CCT 19/06 (2007) ZACC 4;*
3. *National Director of Public Prosecutions v RO Cook Properties (Pty) Limited – 2004 (8) BCLR 844 (SCA);*
4. *Director of Assets Recovery Agency v Szepletowsk (2007) EWCA Civ 755;*
5. *Assets Recovery Agency v Peter Oluwafemi Olaiwon – Civil Suit No. E002 of 2022;*
6. *Salomon v Salomon & Co Ltd (1897) AC 22 (HL);*
7. *Trusted Society of Human Rights Alliance v Mumo Matemu & Others (2014) eKLR;*

LEGISLATION REFERRED TO:

1. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010 of the Laws of Zambia;*
2. *The Penal Code, Chapter 87, Volume 7 of the Laws of Zambia;*
3. *The High Court Rules, High Court Act, Chapter 27, Volume 3 of the Laws of Zambia;*
and
4. *The Mines and Mineral Development Act No.11 of 2015 of the Laws of Zambia.*

OTHER WORKS REFERRED TO:

1. *Black's Law Dictionary, 8th Edition by Bryan A. Garner, Thomson West;*

2. *Concise Oxford English Dictionary 11th Edition, Oxford University Press; and*
3. *Patrick Matibini, Zambian Civil Procedure: Commentary and Cases, LexisNexis, South Africa.*

1. INTRODUCTION

1.1 This Judgment relates to an Application made by the Director of Public Prosecutions (the “DPP”) for a Non-Conviction Based Forfeiture Order in respect of the sum of ZMW 8,142,215.04 held in First National Bank (“FNB”) Account Number 62908248463. The said funds are alleged to constitute tainted property within the meaning of ***The Forfeiture of Proceeds of Crime Act¹*** (the “FPOCA”).

2. BACKGROUND

2.1 The facts giving rise to this Application, as established from the evidence on Record, are that following a report from FNB concerning a suspicious transfer of funds into Account Number 62908248463, held in the name of Lusaka Gold and Platinum Refinery Limited, the Drug Enforcement Commission (“DEC”) commenced investigations. These investigations revealed that the funds in the said account are suspected to be proceeds of the offence of Obtaining Financial Advantage by False Pretences, contrary to ***Section 309A of The Penal Code²***. Further, the funds are alleged to contravene ***Section 71 of The FPOCA¹***. Consequently, the DEC seized the funds pending further legal proceedings.

2.2 Arising from the foregoing, the DPP initiated these Proceedings by Originating Notice of Motion filed on 22nd January, 2025, seeking a Non-Conviction Based Forfeiture Order in respect of the suspected tainted funds. The Application is brought pursuant to **Order XXX, Rules 15** and **17** of **The High Court Rules**³, read together with **Sections 29** and **31** of **The FPOCA**¹. It is supported by an Affidavit in Support and accompanied by Skeleton Arguments.

2.3 On 12th February, 2025, Epitychia DMCC and Alexandros Smolenski (together referred to as the "Interested Parties") filed a Notice of Claim asserting their interest in the said funds. Thereafter, on 13th March, 2025, the Interested Parties filed an Affidavit in Opposition together with Skeleton Arguments in response to the Application.

3. AFFIDAVIT IN SUPPORT

3.1 The Application is supported by an Affidavit deposed by Ms. Abigail Chisumpa Mwepya, a Senior Investigations Officer under the Anti-Money Laundering Investigations Unit ("AMLIU") of the Drug Enforcement Commission ("DEC"). She states that on 28th October, 2022, she received a Report from FNB concerning a suspicious transfer into Account Number 62908248463, held in the name of Lusaka Gold and Platinum Refinery Limited. The Report indicated that a sum of ZMW 4,384,678.38 (equivalent to USD 277,775.00) had been

transferred into the said Account by Smolenski Holdings LLC, allegedly as payment for 45 kilograms of Gold. Copies of the relevant Bank Statement and an Affidavit sworn by a Bank Official were exhibited as **“ACM1(i)”** and **“ACM1(ii)”**.

- 3.2 In the course of her investigations, the Deponent interviewed Mr. Almaz Dyryldaev, Head of Sales at Epytychia DMCC based in Dubai. Mr. Dyryldaev informed her that he had travelled to Zambia, where he was introduced by a Mr. Peter Ndlovu to Mr. Johnson Kitenge Solochi, said to be a Manager at Lusaka Gold and Platinum Refinery Limited. During their meeting, Mr. Solochi allegedly presented him with 45 kilograms of Gold, which was valued at USD 277,775.00.
- 3.3 Mr. Dyryldaev further informed the Deponent that, following the transfer of the funds, Lusaka Gold and Platinum Refinery Limited issued an Air Waybill purporting to confirm shipment of the 45 kilograms of Gold to Smiensi Holdings LLC in Dubai.
- 3.4 However, the Deponent subsequently recorded a Statement from Mr. Christian Kumbe, Chief Security Officer at the National Airports Corporation (“NAC2000”), on 26th August, 2024. Mr. Kumbe stated that the referenced Air Waybill was forged. His Statement is exhibited as **“ACM3”**. Furthermore, Mr. Alexandros Smolenski confirmed to the Deponent that

despite having received the Air Waybill, he never received the purported consignment of Gold.

- 3.5 The Deponent also discovered that Account Number 62908248463 later received an additional sum of ZMW 8,143,135.81 from Alexandros Smolenski. These funds were purportedly intended to cover taxes, freight, insurance, export documentation, smelting, assay, and storage fees associated with a separate consignment of 123 kilograms of Gold, which was allegedly to be supplied by Damphen Clearing and Forwarding Limited. A copy of the transaction history was exhibited as **"ACM1"**.
- 3.6 On 8th November, 2022, the Deponent recorded a Statement from Mr. Michelo Lubemba, a Business Customer Advisor at FNB. His Statement was exhibited as **"ACM4"**.
- 3.7 The investigations further revealed that Damphen Clearing and Forwarding Limited had issued an invoice to Smolenski Holdings for the supply of 123 kilograms of Gold, valued at USD 252,590.29. This Invoice is exhibited as **"ACM5"**. However, upon making inquiries with the Ministry of Mines and Minerals Development on 26th August, 2023, the Deponent was informed that Damphen Clearing and Forwarding Limited did not hold a valid Mineral Trading Permit, despite purporting to have the capacity to supply Gold. The Ministry's response is exhibited as **"ACM6"**.

- 3.8 The Deponent also established that Mr. Smolenski remitted the sum of ZMW 4,036,392.83 to Stanbic Bank Account Number 91300003237285 held by Damphen Clearing and Forwarding Limited for the said 123 kilograms of Gold. Bank Statements evidencing this transaction were exhibited as **“ACM7”** and **“ACM7(i)”**. Further, on 27th November, 2023, the Deponent recorded a Statement from Mr. Lupa Mwansa, a Business Banker at Stanbic Bank’s Industrial Branch, confirming that he had printed the relevant Bank Statement in the ordinary course of business. His Statement was exhibited as **“ACM8”**.
- 3.9 It is the Deponent’s evidence that the 123 kilograms of Gold for which Mr. Smolenski made payment was never delivered. Moreover, the sum of ZMW 143,135.81, which was paid to Damphen Clearing and Forwarding Limited for costs associated with insurance, freight, export documentation, assay, and storage, was not utilised for its stated purpose, as no gold was supplied.
- 3.10 In light of the foregoing, on 2nd November, 2022, the Deponent formally seized FNB Account Number 62908248463 held by Lusaka Gold and Platinum Refinery Limited. A copy of the Seizure Notice was exhibited as **“ACM9”**.
- 3.11 The Deponent states that she was advised by Counsel for the Applicant, and verily believes the advice to be true, that the aforementioned Account and the Funds

therein constitute tainted property and are liable to forfeiture to the State. She further avers, on the advice of Counsel, that the funds in question are proceeds of the Offence of Obtaining Financial Advantage by False Pretences, contrary to **Section 309A** of **The Penal Code**², and that the said Funds contravene **Section 71** of **The FPOCA**¹, being proceeds of serious criminal activity as defined under the Act.

4. APPLICANT'S SKELETON ARGUMENTS

- 4.1 Counsel for the Applicant, in the Skeleton Arguments filed herein, submits that the Application is brought pursuant to **Sections 29** and **31** of **The FPOCA**¹. It is argued that, for the Court to grant a Forfeiture Order, the property in question must constitute "tainted property" in connection with the commission of a serious offence. In support of this position, Counsel referred to **Section 2** of **The FPOCA**¹, which defines a "serious offence" as one that carries a maximum penalty of death or a minimum term of imprisonment of twelve months.
- 4.2 Further reliance was placed on **Section 309A** of **The Penal Code**² and **Section 71(1)** of **The FPOCA**¹. Counsel submitted that **Section 71(1)** empowers the Court to order the forfeiture of tainted property associated with a serious offence, including money suspected to be derived from criminal activity.

- 4.3 It was contended that the evidence before the Court clearly shows that Mr. Alexandros Smolenski initially transferred ZMW 4,384,678.38 (USD 277,775.00) into FNB Account Number 62908248463, held by Lusaka Gold and Platinum Refinery Limited, for the purported purchase of 45 kilograms of gold. After receiving falsified shipment documentation relating to this consignment, Mr. Smolenski made a further transfer of ZMW 8,143,135.81 (USD 509,099.18) for an additional consignment of 123 kilograms of gold. Counsel submitted that the latter amount was obtained through fraudulent misrepresentation, constituting the offence of Obtaining Financial Advantage by False Pretences.
- 4.4 Counsel argued that the offence of obtaining property by false pretences carries a statutory penalty of five years' imprisonment under **Section 309A of The Penal Code**², and therefore qualifies as a "serious offence" under **Section 2 of The FPOCA**¹.
- 4.5 On the strength of the evidence adduced, Counsel submitted that it has been established, on a balance of probabilities, that the funds in question constitute tainted property. He stated that the funds are directly linked to the offence of obtaining pecuniary advantage by false pretences and, alternatively, to the offence of possessing property reasonably suspected to be proceeds of crime, both being serious offences within the meaning of the Act.

4.6 In further support of the Application, Counsel cited the cases of ***Sydney Mwansa v Director of Public Prosecutions (Zambia)***¹, ***Kumarnath Mohunram & Shelgate Investments CC v National Director of Public Prosecutions, BOE Bank Limited & The Law Review Project (Amicus Curiae)***², and ***National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd***³, which will be addressed in greater detail in the Court's analysis and determination.

4.7 In conclusion, Counsel submitted that the Applicant has discharged the evidential burden and established, on a balance of probabilities, that the subject funds are tainted property. The Court was therefore urged to find that the funds are liable to forfeiture to the State in accordance with the provisions of ***The FPOCA***¹.

5. **AFFIDAVIT IN OPPOSITION**

5.1 The Application is opposed by the Interested Party, through an Affidavit in Opposition deposed by Mr. Nikolai Smolenski, Managing Director of Smolenski Trading LLC (formerly Epitychia General Trading LLC).

5.2 The Deponent states, *inter alia*, that in October 2022, the Interested Party was introduced to a Gold purchase opportunity in Zambia by one Peter Ndhlovu. Acting in good faith, the Interested Party dispatched its representative, Mr. Almaz Dyryldaev, to Zambia to assess the legitimacy of the transaction. Upon arrival in Lusaka, Mr. Dyryldaev was introduced to Directors of

Lusaka Gold and Platinum Refinery Limited, including Mr. Johnson Kitenge Solochi, who assured him of the company's legitimacy and standing as a Gold trading enterprise. The representative was also given a tour of the Company's refinery located in Ibex Hill, Lusaka.

- 5.3 While in Zambia, the representatives of Lusaka Gold and Platinum Refinery Limited presented Mr. Dyrlydaev with 45 kilograms of Gold and provided documentation that appeared authentic. Based on the site visit, the representations made, and the documentation received, the Interested Party remitted USD 277,775.00 on 11th October, 2022, to the Account of Lusaka Gold and Platinum Refinery Limited for the initial purchase. A copy of the proof of payment is exhibited as **"NS1"**.
- 5.4 The Deponent avers that the Interested Party was subsequently informed that the consignment was ready for shipment and was provided with an Air Waybill. This Air Waybill, however, was later discovered to be falsified. Believing the initial transaction had been validly concluded, the Interested Party proceeded with a second order of 123 kilograms of Gold, for which an additional sum of USD 506,119.98 was remitted. This payment was made from the personal Account of Mr. Alexandros Smolenski, father to the Deponent, on behalf of the Interested Party. Proof of payment is exhibited as **"NS3"**.

- 5.5 It is further deposed that a separate payment of USD 252,590.29 was remitted to Damphen Clearing and Forwarding Limited as a 5% prepayment for the 123 kilograms of Gold. The Interested Party later discovered that these funds were withdrawn immediately upon being credited. Copies of the invoice from Damphen Clearing and Forwarding Limited dated 8th October, 2022, and the corresponding proof of payment dated 24th October, 2022, are exhibited collectively as **“NS4”**.
- 5.6 The Deponent states that it was ultimately established that no Gold had been shipped, and the Interested Party had been defrauded by Lusaka Gold and Platinum Refinery Limited and its associates. Upon this realisation, the Interested Party lodged a Report with the Zambia Police Service and the Drug Enforcement Commission. It was through this engagement that the Interested Party learned that the funds in the sum of USD 506,119.98 had been seized and were now subject to these Proceedings. A copy of the letter to the Zambia Police Service dated 7th November, 2022, is exhibited as **“NS5”**.
- 5.7 The Deponent further avers that on 26th May, 2023, a Zoom meeting was convened between the Interested Party and the DEC, during which the Interested Party elaborated on the source of the funds. The meeting was attended by Alexandros Smolenski, Almaz Amanat, and Chileshe Kaoma on behalf of the Interested Party, and

by Abigail Chisumpa Mwepya and a Mr. Shamwete on behalf of the DEC. It was only later that the Interested Party became aware that the seized funds were now subject to Forfeiture Proceedings.

- 5.8 The Deponent maintains that the funds in question are legitimate business funds belonging to Epitychia DMCC, a duly registered company in the United Arab Emirates engaged in lawful mineral trading. He asserts that the payments made were part of a *bona fide* commercial transaction, and that this is evidenced by the Statement of Claim filed in Epitychia DMCC & Alexandros Smolenski v Lusaka Gold and Platinum Refinery Limited & Damphen Clearing and Forwarding Limited, Cause No. 2023/HP/2048, wherein the Interested Party seeks recovery of the sums fraudulently obtained.
- 5.9 It is argued that any fraudulent conduct was committed solely by Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited, and that the Interested Party, being an innocent victim of fraud, should not suffer the penalty of forfeiture. The Deponent states that he has been advised by Counsel, and verily believes the same to be true, that the funds cannot be classified as “tainted property” under **The FPOCA**¹, as they were not proceeds of crime, nor used in the commission of any offence.
- 5.10 The Deponent contends that if any forfeiture is to be made, it should be directed at the perpetrators of the

fraud and not the Interested Party, which had no involvement in the fraudulent scheme and is not the subject of any criminal investigation.

- 5.11 Finally, the Deponent affirms that forfeiture of the funds to the State would result in unjust prejudice and cause irreparable financial harm to the Interested Party, which has acted at all times in good faith and within the bounds of legitimate commercial activity.

6. INTERESTED PARTY'S SKELETON ARGUMENTS

- 6.1 The Interested Party oppose the Application on the basis that the funds which are the subject of these Proceedings do not constitute "tainted property" within the meaning of **Section 2** of **The FPOCA**¹. It is contended that the said funds were lawfully acquired in the ordinary course of business and were remitted for a legitimate commercial transaction. It is asserted that the Interested Parties acted in good faith and without knowledge or suspicion that the funds would subsequently be implicated in any unlawful activity.
- 6.2 It is the Interested Party's position that the unlawful conduct alleged by the Applicant, namely the offence of Obtaining Money by False Pretences contrary to **Section 309A** of **The Penal Code**², occurred after the funds had left the Interested Parties' control and possession. Accordingly, it is argued that the Interested Parties are

victims of fraud rather than perpetrators of any criminal conduct.

- 6.3 The Interested Party submits that the purpose of **The FPOCA**¹ is to deprive criminals of the benefits of unlawful conduct and not to penalise innocent parties or to permit offenders to retain the proceeds of their wrongdoing. The Interested Parties rely on **Section 34** of **The FPOCA**¹, which places the burden on the Applicant to prove, on a balance of probabilities, that the property in question is tainted property.
- 6.4 It is argued that the Applicant has failed to establish the necessary nexus between the alleged serious offence and the funds in question, as required by **Sections 29** and **31** of **The FPOCA**¹. In support of this position, the Interested Parties cite the case of **Sydney Mwansa v Director of Public Prosecutions**¹, in which it was held that the Court must be satisfied, on the evidence, that the property is connected to a serious offence before granting a Forfeiture Order. Counsel added that the Court of Appeal, in commenting on **Sections 29** and **2** of **The FPOCA**¹, stated that: -

"It is clear from the foregoing provisions, that what is cardinal is whether the property in issue is tainted property or not. If it is tainted property, is it tainted in relation to a serious offence or not? And in terms of Section 2, a serious offence is one in which the maximum sentence provided by law is death or imprisonment for not less than 12 months. Therefore,

a forfeiture of tainted properties will not be made unless the offence in issue is a serious offence. It does not matter whether a person has sufficient resources to enable him or her acquire such properties. The issue is whether the property is tainted in connection to a serious offence. It may be possible that a person may have the means to procure the property in issue due to their current resources but still involve themselves in criminal activities, the proceeds of which they use to procure, wholly or partially, some properties. Those properties can be a subject of forfeiture, notwithstanding. We hold the view that although non-conviction-based forfeiture (civil forfeiture) is not based on a conviction, there is need to clearly identify the offence which the respondent has committed or alleged to have committed, and then a clear connection established on the balance of probabilities how the offence (serious offence) is related to the property in issue i.e. wholly or partly derived or realised from the commission of the offence; wholly or partly derived or realised from a disposal or other dealing with proceeds of crime.”

- 6.5 The Interested Party further relies on **Section 31(2)** of **The FPOCA**¹, which safeguards the interests of persons who can demonstrate a legitimate interest in the property. It is submitted that the Interested Party acquired the funds for fair value, in an arm's-length transaction, and without reasonable grounds to suspect that the property was derived from or connected to criminal activity.

- 6.6 In fortifying his arguments, Counsel cited the case of ***Director of Assets Recovery Agency v Szepletowsk***⁴, where it was held that: -

“When deciding what the Director must prove, it is important to bear in mind that the right to recover property does not depend on the commission of unlawful conduct by the current holder. All that is required is that the property itself be tainted because it or other property which it represents, was obtained by unlawful conduct... It is important, therefore, that the Director should be required to establish clearly that the property which he seeks to recover, indeed was obtained by unlawful conduct. In order to do that it is sufficient, in my view, for the Director to prove that a criminal offence was committed, even if it is impossible to identify precisely when or whom or in which circumstances, and that the property was obtained by or in return/or it. In my view, Sullivan J. was right, therefore, to hold that in order to succeed, the Director need not prove commission of any specific offence, in the sense of proving that a particular person committed a particular offence on a particular occasion.”

- 6.7 In addition, reliance is placed on **Section 71(2)** of **The FPOCA**¹, which provides that a person is not guilty of possession of proceeds of crime if they acquired or came into possession of such property for sufficient consideration and without reasonable grounds for suspicion. The Interested Party contend that these statutory requirements are satisfied in their case.

- 6.8 The Interested Party also draws the Court's attention to the elements of the offence under **Section 309A** of **The Penal Code**², noting that it is committed by persons making fraudulent misrepresentations, not by victims thereof. It is argued that in the present matter, the Interested Party was the victim of the alleged misrepresentation relating to a purported Gold shipment and associated freight details.
- 6.9 In the premises, the Interested Party contends that the funds in question, having been lawfully obtained when in its possession, did not constitute tainted property and ought not to be forfeited to the State. The Interested Party accordingly prays that the Application be dismissed with costs.

7. APPLICANT'S AFFIDAVIT IN REPLY

- 7.1 The Applicant's Affidavit in Reply was sworn by Ms. Abigail Chisumpa Mwepya, a Senior Investigations Officer in the Anti-Money Laundering Investigations Unit ("AMLIU") of the Drug Enforcement Commission ("DEC"). She deposed, *inter alia*, that the Applicant acknowledges that Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited acted fraudulently in their dealings with the Interested Parties, including by way of Lusaka Gold and Platinum Refinery Limited misrepresenting its capacity to supply gold. Notwithstanding this, the Applicant maintains that the seized funds constitute "tainted property"

within the meaning of **The FPOCA**¹, as they were derived from unlawful activities.

7.2 Ms. Mwepya further deposed that the funds in issue were obtained through the commission of an offence. Accordingly, their forfeiture to the State would not occasion an injustice, as the Court retains the discretion to determine the validity of the Interested Party's claim and, if satisfied that it was not complicit in the unlawful conduct, to direct that such funds be restored to it from the forfeited amount.

7.3 Finally, the Applicant confirmed that Lusaka Gold and Platinum Refinery Limited effected withdrawals of USD 277,775.00 and USD 252,590.29, as evidenced by the Bank Statements exhibited in the Applicant's Affidavit.

8. APPLICANT'S SKELETON ARGUMENTS IN REPLY

8.1 In response to the Interested Party's Skeleton Arguments, Counsel for the Applicant reiterated earlier submissions and emphasised that investigations revealed mineral processing is a distinct stage in the mining and mineral trading business, subject to specific regulation by a Mineral Processing Licence issued by the Ministry of Mines and Minerals Development.

8.2 It was submitted that Lusaka Gold and Platinum Refinery Limited did not hold such a licence. Consequently, the sum of ZMW 8,143,135.81 was obtained under false pretences, namely that the

consignments of Gold would be lawfully processed and shipped to Smolenski Trading LLC, when in fact the company lacked the legal capacity to do so. Counsel argued that these facts disclose a contravention of **Section 309A** of **The Penal Code**².

- 8.3 Counsel contended that the Interested Party was actively engaged in furtherance of the offences relating to the illegal processing and purchase of substantial quantities of Gold, or, alternatively, has failed to discharge the burden of proving that it was not involved in the commission of the offence in respect of which forfeiture is sought. Reliance was placed on **Section 12** of **The FPOCA**¹, which will be examined in detail later in this Court's determination.
- 8.4 It was argued that the Interested Party's assertion that it conducted due diligence amounts to no more than a bare statement, unsupported by credible evidence, and falls short of satisfying the requirement in **Section 12(2)** of **The FPOCA**¹. In particular, the Interested Party has not produced documentary evidence of the underlying transaction showing that it was legitimately conducted, other than an Air Waybill.
- 8.5 Counsel further submitted that the Interested Party, as a legal entity, is distinct from its purported Managing Director, Mr. Nikolai Smolenski. Despite this, no evidence has been provided to prove its legal existence or incorporation, nor any reference to the jurisdiction of

its registration. It was therefore argued that the Interested Party has failed to establish its legal capacity to litigate before this Honourable Court and, as such, has no *locus standi*.

- 8.6 It was further submitted that Mr. Smolenski has attempted to shield himself from personal liability by attributing the due diligence exercise allegedly carried out on behalf of the Interested Party to one Mr. Almaz Dyryldaev. Counsel argued that Mr. Smolenski merely repeated what he was allegedly told by Mr. Dyryldaev without any personal verification of the facts. Significantly, Mr. Dyryldaev has not sworn an Affidavit confirming his visit to Zambia or his findings. This omission, Counsel argued, renders the depositions in the Affidavit in Opposition inadmissible as they are hearsay.
- 8.7 Counsel also asserted that, notwithstanding the alleged visits to the so-called Gold refinery at Ibex Hill, the Interested Party has adduced no evidence showing that it verified the licencing status of this facility, which was evidently situated in a residential area.
- 8.8 It was argued that as Epitychia DMCC, the entity the Interested Party claims to be, is allegedly a duly registered company in the United Arab Emirates engaged in lawful mineral trading, it should have been aware of the distinctions between mining, processing, and selling minerals, as well as the licensing

requirements for each activity. It should therefore have known that Lusaka Gold and Platinum Refinery Limited did not possess a Mineral Processing Licence to refine Gold at the premises in question. This should have raised serious concerns about the legitimacy of the transaction.

8.9 The Applicant therefore submits that the Interested Party knew, or ought to have known, that the transactions in which it engaged were unlawful. As such, it cannot now seek relief in equity, in view of the maxim *volenti non fit injuria*. Counsel argued that the Interested Party has not approached the Court with clean hands, given its knowledge or constructive knowledge of the illegality of the transactions.

8.10 Counsel pointed out that the Interested Party has not exhibited in its Affidavit in Opposition any of the documents it claims were shown to its agent, Mr. Dyryldaev, by Lusaka Gold and Platinum Refinery Limited. These documents are said to have represented the quality and readiness of the Gold for export and allegedly formed the basis upon which the Interested Party remitted the sum of USD 277,775.00.

8.11 It was submitted that the Interested Party bears the evidential burden to demonstrate its legitimacy and to rebut any allegations of illegality or involvement in criminal activities. In this regard, reliance was placed on ***Assets Recovery Agency v Peter Oluwafemi***

Olaiwon⁵, wherein it was stated that once the Applicant has established, with proof, that the property is likely to be proceeds of crime, the evidentiary burden shifts to the Respondent to demonstrate and justify that the property in question is legitimate and has not been acquired through proceeds of crime.

8.12 Finally, Counsel submitted that the Applicant has, on a balance of probabilities, demonstrated that the subject funds constitute tainted property. The Court was urged to adopt the reasoning of Van Heerden AJ in the South African Constitutional Court decision of ***Kumarnath Mohunram & Shelgate Investments CC v The National Director of Public Prosecutions, BOE Bank Limited & The Law Review Project (As Amicus Curiae)***⁶.

9. **THE HEARING**

9.1 At the hearing of this Matter, the Applicant relied on the documents filed on the Record, which were supplemented by *viva voce* submissions. These oral submissions substantially reiterated the contents of the written submissions already before the Court, and we therefore see no need to repeat them.

9.2 In response, Counsel for the Interested Party relied on the Affidavit in Opposition and the Skeleton Arguments filed on its behalf, which were similarly supplemented by *viva voce* submissions. We likewise do not find it necessary to restate these submissions in detail, save to

note that it was argued, *inter alia*, that the Applicant had not placed before the Court any evidence indicating whether the Directors of Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited had been apprehended.

- 9.3 It was further submitted that the Applicant had not adduced any evidence demonstrating that the Interested Party was involved in criminal activities. On the contrary, it was contended that the Interested Party was, in fact, a victim of a serious fraud. Accordingly, it was argued that the funds remitted by the Interested Party in the course of these transactions are not tainted property.

10. CONSIDERATION AND DECISION OF THE COURT

- 10.1 We have given due consideration to the Notice of Motion, the Parties' respective Affidavits and Skeleton Arguments on Record. We have also considered the List of Authorities cited herein, for which we are grateful to Counsel.
- 10.2 The Applicant has applied for a Non-Conviction Based Forfeiture Order of Funds in the sum of ZMW 8,142,215.04 held in FNB Account Number 62908248463, which Account is held by Lusaka Gold and Platinum Refinery Limited, on the basis that it is tainted property and liable for Forfeiture to the State. It is alleged by the Applicant that the funds in the said Account are proceeds of the offence of Obtaining

Financial Advantage by False Pretences, contrary to **Section 309A of The Penal Code** and contravene **Section 71 of The FPOCA¹** as they represent proceeds derived from serious criminal activity under the said **The FPOCA¹**.

- 10.3 On the other hand, the Interested Party alleges that the said funds are not tainted property as they are legitimate business funds belonging to Epitychia DMCC and were remitted as part of a contractual transaction, wherein the Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited fraudulently conducted themselves, thereby rendering the Interested Party a victim of fraud.
- 10.4 Having analysed the evidence on Record, it is not in contention that the Interested Party remitted the subject funds in a contractual transaction with Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited for the purchase of Gold.
- 10.5 It is also not in contention that Lusaka Gold and Platinum Refinery Limited fraudulently misrepresented itself as having the legal capacity or ability to provide the Gold and Damphen Clearing and Forwarding Limited fraudulently purported to export the Gold to the Interested Party. Furthermore, it is not in contention that resulting from investigations

carried out by DEC in this business transaction, the Account subject of these Proceedings was seized by DEC.

10.6 What is in contention is whether or not the Interested Party complicitly participated in the fraudulent conduct of Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited.

10.7 Accordingly, the issues for determination are as follows:

- (i) Whether the Interested Party has *locus standi* to be a Party to this Application;
- (ii) Whether the funds in FNB Account No. 62908248463 are “tainted property” within the meaning of **Section 2** of **The FPOCA**¹;
- (iii) Whether, on the balance of probabilities, the Applicant has discharged the burden imposed under **Section 71** of **The FPOCA**¹ to prove that the funds are proceeds of crime; and
- (iv) Whether the Interested Party was complicit in the commission of the offence alleged by the Applicant.

10.8 We will consider the above identified legal issues in *seriatim* starting with whether the Interested Party has *locus standi* to be a Party to this Action.

10.9 The Applicant has contended that the Interested Party has not demonstrated capacity to litigate before this Court, as it has not adduced evidence of its jurisdiction of registration or incorporation. It was therefore submitted that the Interested Party has no audience before this Court, not having proved its corporate existence.

10.10 **Black's Law Dictionary**¹, at **page 960** defines *locus standi* as "the right to bring an Action or to be heard in a given forum". Similarly, the **Concise Oxford English Dictionary**², at **page 837** defines *locus standi* as "the right or capacity to bring an Action or to appear in Court".

10.11 Further, the learned author of **Zambian Civil Procedure: Commentary and Cases**³ states as follows on **page 59**: -

"Thus, upon the issuance of a certificate of incorporation, a company becomes a body corporate. It can sue and be sued in its corporate name. By virtue of its corporate nature, a company has the capacity, rights, powers and privileges of an individual."

10.12 This is in keeping with the long-established principle from **Salomon v Salomon & Co Ltd**⁶, which affirmed the doctrine of separate legal personality that a duly incorporated company is a legal person distinct from

its members, entitled to sue, and be sued in its own name.

- 10.13 Therefore, for the Interested Party herein to be a proper participant to these proceedings, it must demonstrate its legal existence as a corporate entity and its capacity to litigate.
- 10.14 On our analysis of the Applicant's contention and the evidence on Record, we observe that the Interested Party herein has not exhibited a Certificate of Incorporation or analogous documents.
- 10.15 We however note that the Interested Party has exhibited a Proforma Invoice issued by Damphen Clearing and Forwarding marked "NS4", in which its physical address is indicated. In addition, in its complaint to the Zambia Police also marked "NS4", the Interested Party expressly represented itself as a company incorporated in the United Arab Emirates. These documents were not specifically challenged by the Applicant.
- 10.16 In the circumstances, we find that the Interested Party has sufficiently demonstrated, on a balance of probabilities, that it exists as a duly incorporated corporate entity in the United Arab Emirates. We are fortified in this view by comparative jurisprudence, such as the Kenyan decision in ***Trusted Society of Human Rights Alliance v Mumo Matemu & Others***⁷, where the Supreme Court held that *locus*

standi must be assessed liberally, particularly where a Party has placed *prima facie* evidence of existence before the Court. Similarly, Zambian Courts have consistently required that challenges to a party's legal personality be properly pleaded and substantiated, not raised as an afterthought.

10.17 We therefore hold that the Applicant's objection to the Interested Party's *locus standi* is without merit. The Interested Party is entitled to be heard, and the objection is accordingly dismissed.

10.18 We now turn to consider the second legal issue, namely whether the funds in the FNB Account No. 62908248463 are "tainted property" within the meaning of **Section 2** of **The FPOCA**¹, which we shall consider together with the third legal issue of whether, on the balance of probabilities, the Applicant has discharged the burden imposed under **Section 71** of **The FPOCA**¹ to prove that the funds are proceeds of crime.

10.19 **Section 2** provides a broad definition of "tainted property", which includes: -

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

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

(c) proceeds of the offence."

10.20 The legislative purpose behind this definition is to ensure that property directly or indirectly linked to crime does not remain within the control of persons who obtained it unlawfully, thereby depriving criminals of the benefits of their conduct. Similar expansive definitions appear in foreign jurisdictions such as ***The Proceeds of Crime Act 2002 (UK)*** and ***The Proceeds of Crime and Anti-Money Laundering Act 2009 (Kenya)***, underscoring the consistent approach in common law systems to cast a wide net over proceeds of unlawful activity.

10.21 The Applicant alleges that the funds in question were obtained through the Offence of Obtaining Financial Advantage by False Pretences, contrary to **Section 309A** of ***The Penal Code***². **Section 309A(1) of the Penal Code** provides as follows: -

“Any person who, by any false pretence, dishonestly obtains for himself or another any pecuniary advantage, is guilty of a misdemeanour and is liable to imprisonment for five years.”

10.22 This provision criminalises the dishonest acquisition of pecuniary advantage through false representations and stipulates liability to imprisonment of up to five years. The Offence clearly falls within the class of “serious offences” contemplated by ***The FPOCA***¹, thereby satisfying the threshold for property derived from such conduct to qualify as tainted property.

10.23 Further, **Section 71** of **The FPOCA**¹, on which this Application is also based, provides as follows: -

“A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Zambia any money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence and is liable upon conviction to—

(a) if the offender is a natural person, imprisonment for a period not exceeding five years; or

(b) if the offender is a body corporate, a fine not exceeding seven hundred thousand penalty units.”

10.24 **Section 71** of **The FPOCA**¹ criminalises the handling of property reasonably suspected of being the proceeds of crime, whether by receipt, possession, concealment, disposal, or importation into Zambia. The Section imposes liability both on natural persons and corporate entities. Its policy rationale, much like **Section 329** of **The Proceeds of Crime Act 2002 (UK)**, is to address the mischief of criminals attempting to distance themselves from illicit property through layers of transactions or corporate veils.

10.25 In support of its case, the Applicant referred to the Affidavit of the Managing Director of Smolenski Trading LLC, who deposed that he transferred the sum of USD 277,775.00 to the Account of Lusaka

Gold and Platinum Refinery Limited for the purchase of 45kg of Gold. Proof of payment was exhibited as **“NS 1”**.

10.26 The Managing Director further averred that the payment was induced by what appeared to be a legitimate Air Waybill relating to the said consignment, later discovered to be fraudulent. A copy of this Air Waybill was produced as **“NS2”**.

10.27 Additionally, the Managing Director of Smolenski Trading LLC, deposed that he remitted a further USD 509,099.18 to Lusaka Gold and Platinum Refinery Limited for a second order of 123kgs of Gold. The Applicant asserted that investigations revealed that Lusaka Gold and Platinum Refinery Limited neither held a Mineral Processing Licence nor a Mineral Trading Permit issued by the Ministry of Mines and Minerals Development as required under ***The Mines and Minerals Development Act***³. According to the Applicant, the absence of such licensing rendered their representations false *ab initio*, evidencing fraudulent conduct.

10.28 On the strength of this evidence, the Applicant asserts that the total sum of ZMW 8,143,135.81 was obtained through deliberate misrepresentation that Gold consignments existed, could be processed, and would be lawfully shipped to the Interested Party, when in

fact Lusaka Gold and Platinum Refinery Limited lacked the legal authority or capacity to do so.

- 10.29 Upon our analysis, we find that the Applicant has proved on a balance of probabilities that Lusaka Gold and Platinum Refinery Limited dishonestly misrepresented its ability to supply gold, supported by fraudulent documentation, thereby inducing the Interested Party to remit substantial sums. The lack of requisite licences under ***The Mines and Minerals Development Act***³ further confirms that the entire transaction was unlawful. Consequently, we are satisfied that the sum of ZMW 8,143,135.81 constitutes proceeds of the Offence of Obtaining Financial Advantage by False Pretences contrary to ***Section 309A*** of ***The Penal Code***², and therefore falls squarely within the definition of “tainted property” under ***Section 2*** of ***The FPOCA***¹.
- 10.30 The funds are further captured by ***Section 71*** of ***The FPOCA***¹ as property reasonably suspected of being proceeds of crime. Accordingly, unless the Interested Party can establish a legitimate interest in the said funds, the property is liable to forfeiture to the State.
- 10.31 This brings us to the fourth legal issue for consideration, namely whether the Interested Party was complicit in the commission of the Offence as alleged by the Applicant.

- 10.32 The Applicant has alleged that no evidence has been led to show that the Interested Party verified the licensing status of Lusaka Gold and Platinum Refinery Limited, which was evidently situated in a residential area. It was argued that as Epitychia DMCC, the entity the Interested Party claims to be, is a duly registered company in the United Arab Emirates engaged in lawful mineral trading, it should have been aware of the distinction between mining, processing, and selling minerals and the licensing requirements for each activity.
- 10.33 The Applicant further asserted that the Interested Party should have known that Lusaka Gold and Platinum Refinery Limited did not possess a Mineral Processing Licence to refine Gold at the premises in question and that this should have raised serious concerns about the legitimacy of the transaction.
- 10.34 The Applicant also contended that the Managing Director of the Interested Party, who deposed to the Affidavit in Opposition to the Application, merely repeated what he was allegedly told by Mr. Dyrlydaev on the legitimacy of the transaction the Interested Party had with the Directors of Lusaka Gold and Platinum Refinery Limited, without any personal verification of the facts. It was further pointed out that Mr. Dyrlydaev has not sworn an Affidavit confirming his visit to Zambia or his findings.

- 10.35 On the other hand, the Interested Party has countered these allegations. It maintains that it acted in good faith and with ordinary commercial prudence, having relied upon documents provided by Lusaka Gold and Platinum Refinery Limited such as the Air Waybill, which appeared genuine at the time. It submits that there was no reason to suspect illegality in the transaction, as Lusaka Gold and Platinum Refinery Limited presented itself as a legitimate Zambian business entity. The Interested Party contends that it cannot be held to the regulatory standards applicable to local entities within Zambia, particularly licensing requirements under ***The Mines and Minerals Development Act***³, as it was a foreign purchaser relying on representations made by a Zambian company.
- 10.36 The Interested Party further argues that it was itself a victim of fraudulent misrepresentation and not a participant in it. It submits that the Applicant's assertion that it "ought to have known" of the licensing requirements under Zambian law imposes an unrealistic burden on a foreign trading entity, and that the absence of an Affidavit from Mr. Dyrlydaev does not negate the fact that the Interested Party provided documentary proof of payment and contractual intention to purchase Gold in a *bona fide* commercial transaction.

10.37 The Applicant nevertheless insists that the Interested Party's failure to produce evidence of any due diligence, such as verifying whether Lusaka Gold and Platinum Refinery Limited held a mineral processing or trading licence, or producing an Import or Export Permit from the Director of Mines, demonstrates recklessness or wilful blindness. Counsel for the Applicant relied on **Section 47(1)** of **The Mines and Minerals Development Act**³, which stipulates that: -

"A person shall not import or export any mineral, ore or mineral product without a permit issued by the Director of Mines." (Our emphasis)

10.38 The Applicant also referred to **Sections 111(1)(a)** and **112(a)** and **(b)** of **The Mines and Minerals Development Act**³, which provide as follows: -

"111(1) A person commits an offence who—

(a) fails, neglects or refuses to comply with any direction given under this Act; ..."

"112. A person who commits an offence under this Act for which no penalty is provided is liable, upon conviction—

(a) in the case of an individual, to a penalty not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both; or

(b) in the case of a body corporate or unincorporate body, to a penalty not

exceeding one million penalty units.”

(Our emphasis)

- 10.39 The import of the foregoing provisions is that the importation or exportation of minerals in and out of Zambia requires an Import or Export Permit issued by the Director of Mines. The provisions further stipulate that failure to comply with such directions constitutes an offence punishable by penalties, including imprisonment. A term not exceeding 5 years is prescribed as the period within which a person convicted of contravening the provisions may be imprisoned. Consequently, failure to acquire an Export or Import Permit amounts to a serious offence within the meaning of **Section 2 of *The FPOCA*¹**.
- 10.40 The Interested Party disputes this reasoning, arguing that as a foreign purchaser it could not be expected to itself obtain an Export Permit as such compliance obligations rested with the Zambian supplier, Lusaka Gold and Platinum Refinery Limited. It contends that in any international trade transaction, the responsibility for securing necessary licences and export documentation lies with the seller. To impute criminal complicity to the buyer for the seller's lack of compliance, it is argued, is contrary to commercial common sense and international trading practice.
- 10.41 The Applicant, however, maintains that the Interested Party's omissions demonstrate complicity by wilful

blindness. It submits that the Interested Party failed to show that its transaction with Lusaka Gold and Platinum Refinery Limited was a genuine purchase of Gold from Zambia.

10.42 The Interested Party maintains that it has satisfied the statutory requirements under **Section 31(2)** of **The FPOCA**¹, which allows an Interested Party to resist forfeiture by showing that it acquired its interest in the property for fair value and without knowledge that the property was tainted. It stresses that it paid substantial sums, over USD 700,000.00, for what it believed to be lawful consignments of Gold and that it could not reasonably have known at the time that the funds would be misappropriated.

10.43 In sum, the Applicant argues that the Interested Party was complicit in the commission of the offence of Obtaining Financial Advantage by False Pretences and therefore has no genuine claim to the tainted property. Conversely, the Interested Party contends that it was an innocent victim of the fraudulent acts of Lusaka Gold and Platinum Refinery Limited, and that it acted in good faith and for fair value. It submits that its interest in the subject funds should therefore be protected under **Section 31(2)** of **The FPOCA**¹.

10.44 We have considered the arguments advanced by the Applicant and the Interested Party. The starting point is that under **Section 2** of **The FPOCA**¹, “tainted

property” includes property derived or realised, directly or indirectly, from the commission of a serious offence. The Applicant has demonstrated that Lusaka Gold and Platinum Refinery Limited did not possess a Mineral Processing Licence or a Mineral Trading Permit as required under ***The Mines and Minerals Development Act***³. Further, no Export Permit under ***Section 47*** of the Act was produced. The purported consignment of Gold was therefore fraudulent, and the funds paid by the Interested Party to Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited were proceeds of crime and thus tainted property within the meaning of ***The FPOCA***¹.

- 10.45 On our analysis of the foregoing contentions, we are inclined to agree with the Applicant that the Interested Party, being a duly registered company in the United Arab Emirates engaged in lawful mineral trading, ought to have been aware of the licencing requirements under ***The Mines and Minerals Development Act***³. A commercial entity engaged in international mineral trading is reasonably expected to ascertain that its counterpart holds the necessary licences and permits under Zambian law before entering into such transactions. This should have formed part of the Interested Party’s bare minimum due diligence conducted on Lusaka Gold and

Platinum Refinery Limited and Damphen Clearing and Forwarding Limited.

10.46 We note further, as the Applicant has correctly submitted, that the Interested Party has not provided satisfactory proof that it conducted a due diligence investigation into the legal capacity of Lusaka Gold and Platinum Refinery Limited to process and trade in minerals and Damphen Clearing and Forwarding Limited. The Interested Party's lax approach is also evident in the fact that it did not produce a copy of an Import or Export Permit issued by the Director of Mines, which permit is required under **Section 47** of ***The Mines and Minerals Development Act***³ for the importation or exportation of minerals such as Gold from Zambia.

10.47 On the evidence, the Interested Party failed to take even basic steps to verify the legality of Lusaka Gold and Platinum Refinery Limited's operations in Zambia. By ignoring these clear red flags and choosing to proceed with the transaction, the Interested Party acted in wilful blindness. It is trite that ignorance of the law is not a defence. We emphasise that forfeiture laws aim to wrest benefits from wrongdoing, and participants who turn a blind eye to obvious illegality cannot claim innocence. A person cannot shield themselves via plausible deniability when they had reasonable means to

enquire further. To permit the Interested Party to rely on **Section 31(2)** of **The FPOCA**¹ without demonstrating reasonable due diligence would undermine the very objective of the Act, which is to deprive offenders and their associates of the benefits of crime.

10.48 In the present case, the Interested Party has not demonstrated that it conducted a due diligence investigation into the legal capacity of Lusaka Gold and Platinum Refinery Limited to supply Gold and Damphen Clearing and Forwarding Limited, nor has it shown that it had obtained an Import or Export Permit issued by the Director of Mines to lawfully export the Gold to Dubai as prescribed under **Section 47** of **The Mines and Minerals Development Act**³. It has therefore failed to establish that its transaction with Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited was intended to be a genuine purchase of Gold from Zambia.

10.49 We accordingly find that the Applicant has proved, on a balance of probabilities, that the Interested Party was complicit, through its wilful blindness, in the Commission of the Offence of Obtaining Financial Advantage by False Pretences, as it ought to have known that the Lusaka Gold and Platinum Refinery Limited was not a genuine supplier of Gold. In the

result, the Interested Party does not have a legitimate claim to the sum of ZMW 8,142,251.04.

- 10.50 We are alive to the requirements that the Interested Party must satisfy in order to successfully claim the subject funds, as provided under **Section 31(2) of The FPOCA¹**, which allows a claimant to protect an interest in tainted property by showing that they acquired the interest for fair value and without knowledge, or reasonable means of knowledge, that the property was tainted. The said provision of law is couched as follows: -

“Where a person claiming an interest in property to which an application relates satisfies the court that the person-

(a) has an interest in the property; and

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

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

(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property; the court shall order that the interest shall not be affected by the forfeiture order, and the

court shall declare the nature and extent of the interest in question.” (Our emphasis)

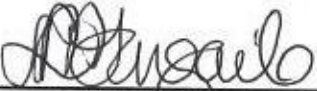
- 10.51 The import of this provision is that the Interested Party has an opportunity to prove the legitimacy of its claim to the tainted property, in which event its interest would not be affected by a Forfeiture Order.
- 10.52 However, in this instance, the Interested Party has failed to show the legitimacy of its claim to the subject tainted property by failing to prove the legality of its transaction with Lusaka Gold and Platinum Refinery Limited and Damphen Clearing and Forwarding Limited. Further, the Interested Party's failure to conduct even minimal due diligence shows that it cannot rely on this statutory defence. We opine that the Interested Party's conduct does not fulfil the requirement of reasonable knowledge nor the exercise of reasonable care.
- 10.53 We therefore find that the Interested Party was complicit in the commission of the Offence of Obtaining Financial Advantage by False Pretences and as such has no genuine claim to the tainted property. The sum of ZMW 8,142,251.04 is therefore tainted property within the meaning of **Section 2** of **The FPOCA**¹ and **Section 71** thereof, being proceeds of crime reasonably suspected of having been obtained under false pretences.

11.5 Costs are for the Applicant to be taxed in default of agreement.

**SIGNED, SEALED AND DELIVERED AT LUSAKA, THIS 30TH
DAY OF SEPTEMBER, 2025.**



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



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



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