

IN THE COURT OF APPEAL OF ZAMBIA APPEAL NO. 304 OF 2022
HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

SETREC STEEL AND WOOD PROCESSING LIMITED APPELLANT

AND

ZAMBIA NATIONAL COMMERCIAL BANK PLC RESPONDENT

CORAM: Chashi, Makungu and Sichinga, JJA

ON: 18th September 2024 and 31st January 2025

For the Appellant: K. Kaunda, Messrs Kaunda Kaunda & Mwila Legal Practitioner

For the Respondent: A. Mwalula (Mrs), Mesdames Ndemanga Mwalula and Associates

J U D G M E N T

CHASHI JA, delivered the Judgment of the Court.

Cases referred to:

1. ***Khalid Mohammed v The Attorney General (1982) ZR, 49***
2. ***Wilson Masauso Zulu v Avondale Housing Project (1982) ZR, 172***
3. ***Sablehand Zambia Limited v Zambia Revenue Authority (2005) ZR, 10***
4. ***Nkongolo Farms Limited v Zambia National Commercial Bank Limited & Others (2005) ZR, 149***

5. *Chrismar Hotel Limited v Stanbic Bank Zambia Limited - SCZ Judgment No 06/2017*
6. *Bank of Zambia v Joseph Kasonde (1995 -1997) ZR, 238*
7. *Bank of Zambia v Ignatius Kashoka - SCZ Appeal No. 020/2026*
8. *Anderson Kambela Mazoka & 2 Others v Levy Patrick Mwanawasa & 2 Others (2005) ZR, 138*
9. *Guttridge v Revenue and Customs (2006) SP C534*
10. *Drake v Harbour (2008) ENCA, Civ 25*
11. *Attorney General v Marcus Kapumba Achiume (1983) ZR, 1*
12. *Bonham-Carter v Hyde Park Hotel Limited (1948) 64 TLR, 177*

Legislation referred to:

1. *The Banking and Financial Services Act, No. 7 of 2017*
2. *The Banking and Financial Services Act, Chapter 387 of the Laws of Zambia (repealed)*
3. *The Court of Appeal Act, No. 7 of 2016*

Rules referred to:

1. *The Supreme Court Practice (White Book) 1999*

1.0 INTRODUCTION

1.1 When we heard this matter on 18th September 2024, Honourable Mr Justice D.L.Y Sichinga, SC, sat with us. He is now no longer part of this Court and therefore, this is a majority Judgment.

1.2 This is an appeal against the Judgment of Honourable Lady Justice C. Lombe Phiri, High Court (General Division) delivered on 21st June 2022.

1.3 In the said Judgment, the learned Judge (the Judge) dismissed the Appellant's (which was the plaintiff in the court below) claims for fraud and damages.

2.0 BACKGROUND

2.1 By a writ of summons dated 21st July 2014, the Appellant commenced an action against the Respondent, claiming the following reliefs:

- (i) Payment or reimbursement of the total sum of K2,906,421.58 (rebased) and US\$6,618.78 being monies unlawfully and fraudulently transferred or removed by the defendant and its agents from the plaintiff's accounts.*
- (ii) Damages for deprivation of use of the said sums occasioned by the unlawful and fraudulent transfers*
- (iii) Damages for loss of business*
- (iv) Damages for loss of business opportunities to expand the business and operations*
- (v) Punitive and exemplary damages*

(vi) Interest

2.2 According, to the attendant statement of claim, the Appellant's agents in March 2014, discovered that the sums of K2,906,421.58 (rebased) and US\$6,618.78, had on various dates unlawfully and fraudulently been transferred by the Respondent and its agents, from the Appellant's accounts held with the Respondent to other accounts within the bank.

2.3 The particulars of the affected accounts were as follows:

(i) 0400210000008410 (8410) - first

current account - K290,234.84

(ii) 04002100000017684 (7684) - second

current account - K2,304,629.35

(iii) 0400510000007404 (7404) - savers

account -K239,832.74

(iv) 0450210000009842 (9842) - Obote

avenue, current account - K71,634.62

(v) 0400280000001179 (1179) - Dollar

account -US\$6,618.78

2.4 It was averred that, after the Judgment of the High Court in cause number 2007/HPC/007 (mortgage

action), the Appellant's books of accounts were removed and taken away by the Respondent during effecting of the foreclosure. That from the time of the mortgage action, the Respondent had been refusing or neglecting to avail the Appellant bank statements relating to the aforestated accounts.

2.5 It was further averred that the Appellant sometime in March 2014, came across part of bank statements for the period of 1999 to 2005, which indicated the aforestated transfers to over sixty-four (64) bank accounts held by the Respondents. That upon enquiry as to who the holders of these accounts were, the Respondent failed to give the accounts names in which the funds were transferred.

2.6 According to the Appellant, it did not issue instructions for the aforestated transfers. That as a result of the unlawful and fraudulent transfers, the Appellant failed to prove repayment of its loans made on the loan with the Respondent, which led to the seizure of the Appellant's property and machinery

2.7 The Respondent settled its defence on 12th October 2016, in which it averred that, it did advise the Appellant as early as 2005, how the balances on its accounts arose and that it was therefore surprising how the Appellant could now plead fraud on issues it was aware of.

2.8 According to the Respondent, it commenced the action under cause number 2007/HPC/007, where the Appellant was ordered to pay the loan it owed the Respondent. That when the Appellant failed to pay, the Respondent foreclosed. That when that action was commenced, the Respondent filed into court all the statements of account up to August 2004. That both the High Court and the Supreme Court confirmed that the Appellant was indebted to the Respondent.

2.9 The Respondent denied being indebted to the Appellant and averred that the Appellant was not entitled to any of the reliefs it was claiming.

3.0 PROCEEDINGS IN THE COURT BELOW

3.1 In the court below, the Appellant called one witness, Sebastian Kopulande (PW1), the Appellant's Chairman

and Chief Executive, who led evidence in tandem with the statement of claim. PW1 added that, following the mortgage action, the Respondent foreclosed and during the process, accounting documents were destroyed which included bank statements.

- 3.2 PW1 further testified that in March 2014, a number of bank statements were brought to his attention by accounts and discovered a multiplicity of bank transfers to different accounts, all held within the Respondent, totalling to about 64 Accounts. According to PW1, the Appellants mode of payment was by cash or cheque.
- 3.3 According to PW1, the transfers were unlawful because in normal banking, a bank has no authority whatsoever to move funds from the account of a client to another without that client's authority, consent or agreement.
- 3.4 It was PW1's testimony that the Appellant concluded that the transfers were premeditated and intentional as they were not undertaken upon instructions from the Appellant. The Appellant took issue with the "CASA account statements" which were reconstructed

statements using excel format which it claimed were forgeries.

3.5 In cross examination, PW1 when taken through some of the alleged transfers forming part of the 64 transfers conceded that some were not fraudulent as they were either loan repayments or reversals or paid to the Appellants accounts. The witness was however not cross examined on some of the 64 transfers

3.6 Equally in its defence, the Respondent called one witness, Jerry Muchimba (DW1), a banker in the employ of the Respondent. According to DW1, some of the money out of the alleged transfers, were debited to the Appellants accounts under its instructions and some were actually loan repayments. That after looking at some of the transfers in question, he was able to match them to some loan repayments as well as to get the beneficiary accounts for some of the transfers. PW1, then addressed some of the alleged transfers, item by item and matched them with the accounts and arrived at the conclusion that some were reversed, others were

paid to the Appellant's loan accounts and some to the Appellants current accounts

- 3.7 In refuting the transfers, DW1 testified that the allegations by the Appellant were not true because a number of the transfers were going to the customers own account. A number of transfers were for loan repayments and some entries were for purposes of restructuring the accounts for the debts and credits in order to open new ones. That there were also some transfers which indicated that the client may have been making telegraphic transfers.
- 3.8 In cross examination, DW1 admitted that he did not have proof of each and every transfer. Further that all transfers must be under the instructions of the customer.
- 3.9 Although not pleaded, DW1's testimony was that the Respondent could not trace most of the statements due to the retention period under **The Banking and Financial Services Act**¹, which only allowed them to keep documents for ten (10) years.

4.0 DECISION OF THE COURT BELOW

4.1 After considering the pleadings, evidence and the submissions by the parties, the Judge first considered the issue of burden of proof. Reference was made to the cases of (i) **Khalid Mohammed v The Attorney General**¹ where it was held *inter alia* as follows:

“A plaintiff cannot automatically succeed whenever a defence has failed, he must prove his case.”

(ii) **Wilson Masauso Zulu v Avondale Housing Project**², where it was stated as follows:

“I think that it is accepted that where a plaintiff alleges as indeed any other case where he makes allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to Judgment, whatever may be said of his opponents case.”

(iii) **Sablehand Zambia Limited v Zambia Revenue Authority**³ where it was held that:

“A party alleging fraud must lead evidence so that the allegation is clearly and distinctly proved on a higher standard of proof than on a mere balance of probabilities, because the allegations are criminal in nature.”

4.2 After examining the traditional ingredients of fraud and the case of **Nkongolo Farms Limited v Zambia National Commercial Bank Limited & Others**⁴, where it was stated that *“Fraud arises from acts and circumstances of imposition. That it usually takes the form of statement that is false or suppression of what is true,”* the Judge concluded at page J56 as follows:

“From the evidence adduced before the court, I find that the plaintiff has not shown that there was any material misrepresentation of the facts upon which it relied to occasion any damages or injury. What is in fact apparent is that there were some transactions that were not understood by the plaintiff’s agents. That however, owing to the prevailing acrimonious circumstances between the plaintiff and the defendant, owing to the outcome of the mortgage proceedings, no

meaningful reconciliation could have transpired between the parties... it is clear that this was just a commercial issue on the part of the parties that had failed its objectives. No malafides may be inscribed on the defendant in this matter.

4.3 In view of the aforestated finding, the Judge dismissed all claims for damages as according to her, she had great difficulty in ascribing any liability for any loss or damage on the Respondent.

5.0 THE APPEAL

5.1 Dissatisfied with the Judgment, the Appellant has appealed to this Court, advancing four (4) grounds as follows:

- (i) The court below erred in both law and fact, by holding that the Appellant failed to discharge its burden of proof on fraud and others, notwithstanding that the Appellant had demonstrated that the undisputed transfers to over 64 accounts were not supported by instructions or authority from the Appellant and also not supported by 64 loan or overdraft facilities availed to the Appellant, if any;*

- (ii) *The court below erred both in law and fact by holding that the Respondent had offered reasonable explanation, when the Respondent had the burden to outrightly discharge its affirmative assertion that the transfers to the 64 accounts were effected with the authority of the plaintiff;*
- (iii) *The Court below erred both in law and fact by dismissing the Appellants claims despite acknowledging that some of the transfers went to the Appellants account and without identifying and determining these accounts and where the other transfers went to.*
- (iv) *The court below erred both in law and fact by dismissing the claims for damages for deprivation of use, loss of business (profits) and loss of business opportunities to expand the Appellants business and operations when it was clear that the funds herein having been transferred without authority, the Appellant was deprived of access to and usage of the funds and that such damages ought to have*

been determined through assessment proceedings.

6.0 ARGUMENTS IN SUPPORT

- 6.1 At the hearing, Mr Kaunda, Counsel for the Appellant, relied on the Appellant's heads of argument, which he augmented with brief oral submissions.
- 6.2 In arguing the first ground of appeal, it was submitted that, the undisputed facts of the case shows that the Respondent's witness (DW1), conceded in cross examination that the 64 bank accounts to which payment were made, were not loan accounts.
- 6.3 It was submitted that, there was no written authority or mandate by the Appellant, for the Respondent to effect the transfers to the 64 accounts. According to the Appellant, DW1 further conceded that he did not know the owners or holders of the 64 accounts, although admitting that they were all accounts held with the Respondent. That DW1 also conceded that there were no facility letters or mandate to support any of the transfers. That in view of the aforesaid, the Appellant did discharge its evidential burden and ultimately burden of proof on the claim for fraud.

6.4 The Appellant argued that, banks operate on customer instructions. Any debit to a customer's account must be supported by the customers authority or mandate. Our attention was drawn to the Supreme Court decision in the case of **Chrismar Hotel Limited v Stanbic Bank Zambia Limited**⁵, where they opined as follows:

“...In any case, it is incumbent upon the banker when challenged to explain why it has taken a certain course of action in regard to a customer's account without a customer's concurrence, to justify its action by pointing to a legally sanctioned reason empowering it to do so.”

6.5 Grounds two and three were argued together. The Appellant submitted that, upon the Appellant's demonstration that the transfers were made from its accounts to mysterious accounts without its authority, the Respondent's onus and evidential burden was to outrightly discharge its affirmative assertion that the transfers were with the authority of the Appellant. It was submitted that the Respondent's explanation, reasonable or not, was not enough to discharge its evidential burden. Our attention was drawn to paragraph 3.32 page 48 of the

record of appeal (the record) where the learned Judge in the court below stated as follows:

“It was stated that the defendant demonstrated that some of the transfers the plaintiff alleged were fraudulent transfers to unknown accounts actually went to the plaintiff’s accounts. That these were deductions made by the defendant bank in exercise of its right of set off.”

6.6 We were further referred to paragraph 5.4.9 at page 66 of the record where the learned Judge stated as follows:

“During the proceedings before the court, the defendant has presented its explanations regarding certain issues pertaining to the form and contents of the statement. I find these to be reasonable explanations from which any reasonable and competent tribunal would infer that there were no intention to defraud the plaintiff on the part of the defendant Bank.”

6.7 According to the Appellant, from the aforesaid excerpts, it is clear that the Respondent’s position is that “some transfers” went to the Appellants account, in what the Respondent termed as its right to a set off. Further that, the court below held that the Respondent had presented

explanations regarding “certain issues”. That the Respondent did not demonstrate why the purported set offs were made to the accounts whose opening dates and holders are not known, even to DW1. Further that, neither DW1 nor the court listed or identified the accounts relating to some transfers, which allegedly went to the Appellant’s accounts for purposes of a set off.

6.8 It was the Appellant’s contention that, by holding that “certain issues” were explained, the court recognised and acknowledged that not all transfers were explained by DW1. That however, the court again did not determine or identify the actual “certain issues” or the transfers the Respondent explained and the issues or transfers that were not explained.

6.9 The Appellant placed reliance on the case of **Bank of Zambia v Joseph Kasonde**⁶, in which the Supreme Court endorsed the High Court’s holding as follows:

“The defendant is a public institution and those running it must at all times adhere to the principle of fair play.”

6.10 According to the Appellant, the court below failed to analyse the evidence and to explain what comprised the

certain issues pertaining to the form and content of the statements. That the court merely relied on the questionable CASA statements, which was a misdirection.

6.11 In respect of the fourth ground, it was submitted that the Appellant suffered damages as it was deprived use of the sums being claimed. As such, the court below ought to have ordered for the assessment of damages, if the court was not in a position to determine the actual sums transferred and damages. The Appellant in that respect relied on the Supreme Court case of **Bank of Zambia v Ignatius Kashoka**⁷, on the need to refer such matters to assessment.

7.0 RESPONDENT'S ARGUMENTS

7.1 In opposing the appeal, Mrs Mwalula, Counsel for the Respondent, relied on the Respondent's heads of argument, filed into Court on 27th September 2023, which she augmented with brief oral submissions.

7.2 In respect of the first ground, it was submitted that the court below was on firm ground in holding that the Appellant failed to discharge its burden of proof on fraud. Reliance was placed on the learned authors of **Phipson on**

Evidence¹, at paragraph 6-06, page 157 where they state as follows:

“so far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issue, if when all the evidence is adduced by the parties, the party who has this burden has not discharged it, the decision must be against him. It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons.”

7.3 Further reliance was placed on the case of **Anderson Kambela Mazoka & 2 Others v Levy Patrick Mwanawasa & 2 others**,⁸ where it was stated that:

“Where a plaintiff...makes any allegation, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to Judgment, whatever may be said of the opponent’s case.”

7.4 As regards fraud, reference was made to Order 18/12/7 of **The Rules of the Supreme Court**¹(RSC) which provides as follows:

“Fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

7.5 It was submitted that, a number of English cases on the shifting of evidential burden, namely **Guttridge v Revenue and Customs**⁹ and **Drake v Harbour**¹⁰, reveal that before the evidential burden can shift, there is need for the party bearing the legal burden of proof to furnish sufficient evidence to warrant the shift. That it is thus evident that the general rule establishes that the legal burden of proof, which also carries the evidential burden, rests on the proponent of a case or allegation who must discharge his evidential burden before an obligation to adduce evidence in rebuttal shifts to the opponent.

7.6 It was submitted that, the record will show that the Respondent gave reasonable explanation to the claims, showing that most of the transfers in contention consisted of loan repayments, as shown in the defendants supplementary bundle of documents. The said bundle shows reconstructed bank statements. It was submitted that, DW1, was able to demonstrate that the sum of K2,906,421,573.68 and US\$6,618.78 were done under

instructions of the Appellant. That it was shown to the court below that most of the sums were actually loan repayments.

- 7.7 It was submitted that on a balance of probabilities, the Respondent demonstrated that all the money allegedly fraudulently deducted from the Appellant's accounts were in fact repayments made from the Appellants current and savings accounts to its loan account. That the court below therefore having weighed the assertions from both parties and upon examination of the evidence before the court, rightly reached the conclusion that there was no fraud.
- 7.8 According to the Respondent, it rebutted that allegation of fraud. We were urged not to disturb the findings of the court below in line with guidelines espoused in the case of **The Attorney General v Marcus Kapumba Achiume**¹¹ as follows:

“The appeal court will not reverse findings of fact made by a trial Judge unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence upon a misapprehension of facts or that they were findings which on a proper view

of the evidence no trial court acting correctly can reasonably make.”

7.9 In arguing grounds two and three, it was submitted that the court below was on firm ground in dismissing the claims as the Respondent proved why the transfers occurred. That the burden lay with the Appellant to establish the plea of fraud beyond a mere balance of probabilities, which the Respondent failed. That regardless, the Respondent rebutted the Appellant's allegations, by explaining the transfers.

7.10 It was submitted that, in rebutting the Appellant's allegation of fraudulent transactions through Excel sheets instead of CASA statements, the Respondent on the strength of Section 50 (1) of **The Banking and Financial Services Act**¹, showed that banks retain records for ten (10) years and the repealed **Banking and Financial Services Act**², that was in force at the time of commencement of the action herein, was for a shorter period of six (6) years. That the excel sheets were in no way meant to mislead the court but was an alternative, seeing that the actual records were no longer in the

Respondent's possession and needed to be reproduced in another format.

7.11 In response to ground four, the Respondent cited the case of **Bonham-Carter v Hyde Park Hotel Limited**¹² where Lord Goddard CJ, had this to say, at page 178:

“Plaintiffs must understand that, if they bring action for damages, it is for them to prove their damage. It is not enough to write down particulars and so to speak, throw them at the head of the court, saying: this is what I have lost, I ask you to give me these damages. They have to prove it.”

7.12 It was submitted that the onus was on the Appellant to prove the loss suffered by producing evidence to that effect, to enable the court determine the loss with certainty. According to the Respondent, the Appellant did not produce evidence proving deprivation of use of money, loss of business or opportunities. That it merely reproduced its company profile rather than showing extent of injury for which the damages claimed arose.

8.0 ARGUMENTS IN REPLY

8.1 In replying to the Respondents arguments, which consisted of seven (7) pages, the Appellant on 2nd September 2024, filed into Court an oversized heads of argument in reply, consisting of thirty-six (36) pages.

8.2 The purpose of arguments in reply is to address and challenge the arguments and legal issues raised by the Respondent in its arguments. It gives the Appellant an opportunity to address the question the court may have after considering the Respondent's arguments. It is not an opportunity to rehash the Appellant's main heads of argument and this is the trap the Appellant fell in.

8.3 In the view that we have taken, we see no need to recapitulate the arguments in reply.

9.0 OUR ANALYSIS AND DECISION

9.1 We have considered the arguments by the parties and the Judgment being impugned. We will consider the first, second and third grounds simultaneously as they are entwined. The Appellant attacks the finding by the Judge that the Appellant failed to discharge its burden of proof on fraud. According to the Appellant, there is no dispute that the 64 transfers were made from its accounts. It was

the Appellant's contention that, it was for that reason, that DW1 attempted to offer explanations for the transfers. That the fact that the transfers were made was also confirmed by the Judge.

9.2 The Appellant's further contention was that there was no written authority or mandate by the Appellant for the Respondent to effect the transfers. According to the Appellant, having demonstrated that the transfers were made and that they were not supported by any authorities or mandate, the Appellant did discharge its evidential burden and ultimately burden of proof on the claim for fraud. It was also contended that the explanations by DW1 cannot hold in the absence of authority to have the transfers made.

9.3 We are recognizant of the holding in the **CHRISMAR HOTEL LIMITED** case, cited by the Appellant, that banks operate on customers instructions. Any debit to a customer's account without the customers authority or mandate, is not permissible.

9.4 In our view, the Judge took a very narrow approach to the Appellant's claim. The claim by the Appellant was that the 64 transfers were made unlawfully and fraudulently. The

issue for determination therefore should have been *“were the 64 transfers made unlawfully and fraudulently.”*

9.5 We note that unfortunately, there was no issue for determination formulated by the Judge. The Judge purely relied on the traditional ingredients of fraud and made a finding that there was no fraud.

9.6 It is trite law that when money is debited to a customer’s account without the customer’s permission, it is banking fraud. As regards the bank’s right of set off, where there is no statutory or contractual right of set off, the bank needs to clearly warn the customer in advance, that they might use the right of set off, if the defaulting customer does not contact them or pay the arrears.

9.7 The Appellant having made the allegations and having provided the particulars, such as the account numbers and the amounts, discharged its burden of proof. The evidential burden therefore shifted to the Respondent to prove that the authority or mandate was given by the Appellant. It was incumbent upon the Respondent to justify the transfers by pointing to a legally sanctioned reasons empowering it to make the transfers. We note that, this the Respondent did in a number of transactions

through DW1, though not in its pleadings, which would have been the appropriate mode.

9.8 We note that, however, the Respondent admitted that there were some transfers, in which the Respondent could not produce any supporting documents for one reason or another.

9.9 In light of the aforestated, we are of the view that the Judge erred in wholesomely dismissing the matter. This is a matter which needs a thorough examination of the alleged 64 transfers, based on the evidence of PW1 and DW1. There is need to separate the transfers which were admitted to by PW1 as to not being fraudulent, the reversals and those for which supporting documentation was provided and those which went towards loan repayments, as testified by DW1. We have taken this view as there were some transfers which remained unexplained, and we are of the view that for these, judgment ought to be entered.

9.10 Before we embark on the aforestated exercise, in the interest of justice, in line with the provisions of Section 24 (1) (a) of **The Court of Appeal Act**³, there is need to make

mention of the retention period under **The Banking and Financial Services Act²** (Repealed).

9.11 Section 54 of the Act, which was applicable at the time provided as follows:

“A register or record required or authorised by or under this Act to be prepared and maintained shall be retained by the financial service provider that prepared it for a period of at least six years or in the case of a register or record relating to unclaimed funds for a period of at least ten years.”

9.12 However, Section 55 (2) goes on to provide as follows:

“A financial service provider may destroy any register or record kept under this part at any time after the register or other record has been converted to another form.”

9.13 It is evident that before destroying the documents relating to the transactions in issue, the Respondent was under an obligation to convert them to another form and not to attempt to reconstruct the accounts as was the case herein. The Respondent cannot therefore rely on Section 54, in its defence.

9.14 In our examination, as earlier alluded to, we have taken into consideration the testimonies of PW1 and DW2. We have also examined the summary of unauthorised bank transfers from the Appellant's accounts to unknown accounts as appears at pages 146-147 of the record, as well as the statements at pages 803, 824, 846, 869 and 875 of the record. Having examined the same, we are of the view that the Respondent offered a reasonable explanation for the following accounts and amounts as they appear at pages 146-147:

S/N	ACCOUNT	AMOUNT
10.	0180210000000019	386,120,523.70
22.	0400220000000892	30,509,933.00
31.	0400510000001637	780,000.00
37.	0406150000000818	1,001,101,035.56
38.	0408070000000013	811,332,949.64
39.	0408070000000038	259,500,172.84
56.	0670210000006137	5,000,000.00
63.	0406150000000010	35,753,620.00
	TOTAL	K2,530,098,234.74 (Unrebased)

9.15 As regards the following, there was no explanation at all offered by the Respondent:

S/N	ACCOUNT	AMOUNT
1.	0030210000000693	26,437,500.00
2.	0030210000004520	1,813,549.90
3.	0030210000002064	2,502,000.00
4.	040900000000023	37,000,000.00
5.	045024000000034	1,700,000.00
6.	0090210000000002	2,500,000.00
7.	0090210000000012	3,279,872.00
8.	0090210000000082	6,800,000.00
9.	0090210000002502	3,500,000.00
11.	0400010000031093	900,000.00
12.	0400010000089417	12,733,000.00
13.	0400210000000194	350,000.00
14.	0400210000000527	350,000.00
15.	04002100000001373	425,000.00
16.	0400210000006538	532,000.00
17.	0400210000012190	850,000.00
18.	0400210000012318	500,000.00
19.	0400210000017512	18,676,513.00
20.	0400210000017571	3,200,000.00
21.	0400220000000242	2,663,842.50
23.	0400220000001508	5,892,228.70
24.	0400230000000015	2,028,871.49
25.	0400230000000259	14,047,657.00
26.	0400230000000424	21,038,934.00
27.	0400240000000080	3,000,000.00
28.	0400240000000094	2,830,000.00
29.	0400240000000138	6,500,000.00
30.	0400270000004711	1,550,000.00
32.	0400510000002502	29,560,000.00
33.	0400510000005802	3,500,000.00
34.	0400510000012249	3,100,000.00
35.	0400530000000034	60,000,000.00
36.	0406010000000521	48,792,120.00
40.	0450210000003140	1,015,000.00

41.	0450240000000034	8,500,000.00
42.	0480010000012558	3,500,000.00
43.	0500010000005096	813,000.00
44.	051001000003713	7,700,000.00
45.	0510010000080105	2,140,000.00
46.	0510010000089195	7,262,000.00
47.	0520010000057223	2,700,000.00
48.	0520010000076315	2,720,000.00
49.	0520010000076355	4,220,000.00
50.	0530210000200150	1,586,250.00
51.	0530210000200435	6,000,000.00
52.	0540210000002980	822,500.00
53.	0620510000008121	2,080,000.00
54.	0660270000000491	425,000.00
55.	0660280000200508	10,773,180.00
57.	0670230000000852	500,000.00
58.	0670240000000128	320,000.00
59.	0680210000004231	3,176,500.00
60.	0690510000000411	3,864,000.00
61.	0740270000000501	2,292,000.00
62.	06905100000000336	5,914,500.00
64.	05100100000082441	754,000.00
		Total K407,631,018.65
		K407,631.01 (rebased)

9.16 In respect of the US Dollar account, no explanation

was offered for the following amounts:

S/N	ACCOUNT	AMOUNT
1.	0660280000200508	1,795.53
2.	0030210000000693	4,406.25
3.	0030280000002064	417.00
	Total	US\$6,618.78

9.17 In respect of the fourth ground, it attacks the Judge's refusal to award damages for loss of business, loss of business opportunities to expand the business operations and punitive and exemplary damages.

9.18 We note that although the Appellant pleaded damages and in its bundle of documents exhibited documents about its operations and successes as a company, no evidence at all was led at the trial to prove the damages incurred or suffered by the Appellant due to the alleged unlawful and fraudulent transfers. This ground therefore has no merit and is accordingly dismissed.

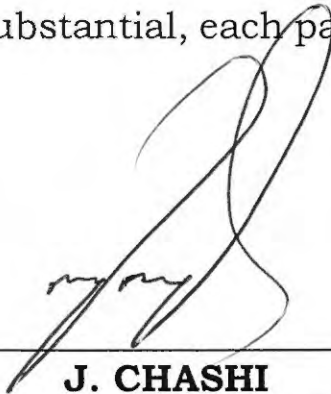
20.0 CONCLUSION

20.1 In view of the aforestated, grounds one, two and three are partially allowed and ground four is dismissed. The Orders of the court below are set aside and in its place, we order that Judgment be and is accordingly entered in the sums of K407,631.01 (rebased) and US\$6618.78.

20.2 The sum of K407,631.01 will attract interest at the average short-term bank deposit rate from the date of issue of the writ of summons to the date of our judgment and thereafter at the current commercial bank lending

rate as determined by Bank of Zambia up to the date of settlement. Whilst the sum of US\$6,618.78 shall carry interest at 4.99 per centum per annum, being the LIBOR interest rate from the time of issuance of the writ of summons to the time of settlement.

20.3 The appeal having only partially succeeded, which success is not substantial, each party shall bear its own costs.

A handwritten signature in black ink, appearing to read 'J. Chashi', is written over a horizontal line.

J. CHASHI
COURT OF APPEAL JUDGE

A handwritten signature in blue ink, appearing to read 'C.K. Makungu', is written over a horizontal line.

C.K. MAKUNGU
COURT OF APPEAL JUDGE