



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
FINANCIAL CRIMES DIVISION  
CIVIL CAUSE . 02 OF 2024

BETWEEN

THE FINANCIAL INTELLIGENCE AUTHORITY ..... CLAIMANT

-AND-

ZAHRA ALI ..... 1<sup>ST</sup> DEFENDANT  
FIRST CAPITAL BANK OF MALAWI ..... 2<sup>ND</sup> DEFENDANT

CORAM: HON. JUSTICE VIOLET PALIKENA-CHIPAO  
*Chitsime, Counsel for the Claimant*  
*Mr. Dzikanyanga, Court Clerk*

*Chipao, J*

RULING

1. The Claimant, the Financial Intelligence Authority (FIA), on the 29<sup>th</sup> March 2024 filed a without notice application for an interlocutory injunction against the two Defendants; Zahra Ali and First Capital Bank of Malawi. I granted the application but reserved my reasons for the same.
2. The basis of the application is that the Claimant obtained a preservation order against the 1<sup>st</sup> Defendant in respect of his account number 5122784009 domiciled at First Capital Bank on 29<sup>th</sup> January 2024 in this court under *Financial Crimes Cause No. 1 of 2024* in the case of *The Financial Intelligence Authority v. Zahra Ali*. On the other hand, the 1<sup>st</sup> Defendant obtained a mandatory injunction from the Commercial Court in Blantyre before Honourable Justice Manda in *Commercial Cause No. 56 of 2024* being the case of *Zahra*

*Ali v First Capital Bank* on 27<sup>th</sup> March 2024 requiring the bank to release the funds subject of the preservation order. The Claimant's argument is that if the funds are released, the further proceedings in this matter would be rendered moot and a mere academic exercise. The Claimant also argued that this is an abuse of court process as the 1<sup>st</sup> Defendant is fleeing from the court with the rightful jurisdiction and is essentially engaged in forum shopping.

3. The Claimant therefore prayed for an injunction to be granted until the substantive matter is resolved on the following terms:
  - a. That the 1<sup>st</sup> Defendant be stopped from accessing the funds of MK100, 000, 000.00 in her account which are subject of a preservation order from this court; and
  - b. That 2<sup>nd</sup> Defendant, First Capital Bank should not release the sum of MK100, 000, 000.00 in the Defendant's account.
4. As a background to the application as can be gathered from the sworn statement in support of the application, the 1<sup>st</sup> Defendant's account received funds amounting to MK100, 000, 000 through her bank account 5122784009 domiciled at First Capital Bank from Bilderberg Limited account number 5415000010004 domiciled at Ecobank Malawi Limited. The Claimant froze the 1<sup>st</sup> Defendant's Account as part of the investigations into the Bilderberg Case on 20 September 2023 as the funds were suspected to be proceeds of crime. Exhibit EM1 is a Freezing Directive issued by FIA in respect of the account in issue which was made pursuant to section 23(4) of the Financial Crimes Act, 2017.
5. The Claimant obtained a preservation order against bank accounts of Dr. William Bilderberg and Bilderberg Limited domiciled at Ecobank Malawi Limited and 9 other Defendants on the basis that there were reasonable grounds to believe that the funds in the said accounts were proceeds of crime. The order was amended and perfected on 26<sup>th</sup> October 2023. The matter was brought before the *Financial Crimes Division under Financial Crimes Civil Cause No. 35, the Financial Intelligence Authority v. Dr. William Bilderberg and 10 Others*. The preservation order was published in the newspaper as prescribed by law on 8<sup>th</sup> November 2023. The preservation order was exhibited in this application as EM2.
6. On 29<sup>th</sup> January 2024 the Claimant obtained a preservation order in this court against the 1<sup>st</sup> Defendant under *Financial Crimes Cause No. 01 of 2024, The Financial Intelligence Authority v. Zahra Ali*. The preservation order was exhibited as EM3 in the Claimant's sworn statement in support of the application.
7. On 15<sup>th</sup> February 2024, the Commercial Division sitting at Blantyre made an order releasing the money in the accounts of Dr. Bilderberg, Bilderberg Limited and the 9 other

Defendants on the basis that the preservation order granted by the Financial Crimes Division had lapsed by effluxion of time and that the money laundering charges in respect of the funds had been dropped by the Director of Public Prosecutions. The order of the Commercial Division was made under **Commercial Cause No. 160 of 2023, Bilderberg Limited and Dr. William Bilderberg v. Ecobank Malawi Limited and Financial Intelligence Authority (as an added party)**. The ruling was exhibited as EM4.

8. On 20<sup>th</sup> February 2024, the 1<sup>st</sup> Defendant filed with the Financial Crimes Division and rightly so being the court which granted the preservation order, an application to rescind the preservation order under section 71 (1)(a) of the Financial Crimes Court under **Financial Crimes Cause No. 1 of 2024, The Financial Intelligence Authority v. Zahra Ali**. By its ruling of 1<sup>st</sup> March 2024, the Financial Crimes Court, dismissed the application for rescission of the preservation order and for the release of the preserved funds.
9. On 27<sup>th</sup> March 2024, the 1<sup>st</sup> Defendant obtained an interlocutory injunction from the Commercial Division compelling the 2<sup>nd</sup> Defendant Bank to release the money subject of the preservation order to the 1<sup>st</sup> Defendant despite the fact that the preservation order against the 1<sup>st</sup> Defendant's account was still subsisting. As observed by the Claimant in this application, the Claimant was not even cited as a party despite having significant interest in the matter. The injunction was obtained under **Commercial Division Cause No. 52 of 2024, Zahra Ali v. First Capital Bank**. The order of injunction is exhibited as EM5.
10. The present application for injunction was filed with the court on 29<sup>th</sup> March 2024 after the Claimant became aware of the injunction granted in **Commercial Cause No. 52 of 2024**.
11. The preservation order obtained on 29<sup>th</sup> January 2024 against the 1<sup>st</sup> Defendant's Bank Account under **Financial Crimes Cause No. 1 of 2024** which is exhibited as EM3 was as follows:

1. A preservation order is granted with respect to the following;
  - a. The balance of K100, 000, 000 in the Defendant's bank account number 5122784009 at First Capital Bank.
2. The said funds shall be brought under the control of the Director General of the Financial Intelligence Authority (who is the administrator of the Confiscation Fund on behalf of the Minister in terms of section 130 (2) of the Financial Crimes Act) until the expiration of the period prescribed under section 67 of the Financial Crimes Act or until the conclusion of the forfeiture proceedings instituted herein.
3. The Claimant shall cause this preservation order to be published in the Government Gazette or two newspapers of the widest circulation within 21 days of this order.

4. The Defendant or any interested third party wishing to oppose this order to file their notice in terms of section 66 of the Financial Crimes Act.
12. In terms of the order and in terms of the Financial Crimes Act, the preservation order was to remain valid until expiry of the period prescribed under section 67 of the Financial Crimes Act or until the conclusion of forfeiture proceedings or until rescinded by the court on application by an affected party made pursuant to section 71(1) of the Financial Crimes Act. Forfeiture proceedings in respect of the preserved property have not been concluded. Validity period of a preservation order under section 67 of the Financial Crimes Act is 90 days. The preservation order having been granted on 29<sup>th</sup> January 2024, is still valid.
13. The 1<sup>st</sup> Defendant application for rescission of the preservation order was made on the basis that the source of the funds was no longer facing criminal charges and that by order of Court, in **Commercial Cause No. 160 of 2022, *Bilderberg Limited and Dr. William Bilderberg v. Ecobank Malawi Limited and Financial Intelligence Authority (as an added party)***, all accounts were unfrozen and that it was only fair that the funds in 1<sup>st</sup> Defendant's account also be released. The 1<sup>st</sup> Defendant's application to have the preservation order rescinded under section 71(1)(a) of the Financial Crimes Act was dismissed by the Court on 1<sup>st</sup> March 2024 in **Financial Crimes Cause No. 01 of 2024, *The Financial Intelligence Authority v. Zahra Ali***
14. In its ruling in the said **Financial Crimes Cause No. 01 of 2024, *The Financial Intelligence Authority and Zahra Ali***, the court in dismissing the application considered the following:
  - a. *That in terms of the law, the preservation order was still valid;*
  - b. *That the argument that criminal proceedings against the source of the funds were completed was not sufficient basis for rescinding the preservation order as under section 74(4) of the Act, the law clearly provides that the validity of an order under section 74(1) of the Act is not affected by the outcome of criminal proceedings or investigations to institute criminal proceedings; and*
  - c. *That the court in **Financial Cause No. 35 of 2023** which granted the preservation order purportedly rescinded by Honourable Justice Manda in **Commercial Cause No. 160 of 2023** had not determined the question of validity of the preservation order, this application could not stand.*
15. According to the application for a preservation order in **Financial Crimes Cause No. 01 of 2024** and the application for the rescission of the preservation order in the same case, the case in **Financial Crimes Civil Cause No. 1 of 2024** is connected to the case in **Financial Crimes Cause No. 35 of 2023, *The Financial Intelligence Authority v. Dr William Bilderberg and 10 Others***. In the latter case, the FIA filed forfeiture proceedings

which are yet to be heard suffice to say that there is a pending ruling on preliminary objection against the forfeiture proceedings.

16. The application before the court is one of an interlocutory injunction. Interlocutory injunctions are governed by Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules, 2017 [hereinafter referred to as " the CPR"], which require an applicant to establish the following;

- (a) That there is a serious question to be tried;
- (b) That damages may not be an adequate remedy; and
- (c) That it shall be just to do so.

17. In deciding whether an Applicant has discharged the required burden for granting an injunction, I am mindful that an interlocutory injunction is an interim remedy that is available to the parties before their rights are finally determined and it is meant to preserve the status quo between the parties until their rights are determined by the Court. Tembo J, as he then was had this to say in the case of *Ian Kanyuka v. Thom Chumia & Others, PR Civil Cause No. 58 of 2003*

*"The usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The injunction will almost always be negative in form, thus to restrain the defendant from doing some act. The principles to be applied in applications for injunction have been authoritatively explained by Lord Diplock in American Cyanamid Co. v. Ethicon Limited [1975) A.C. 396.*

18. It is clear from the foregoing that the preservation order against the 1<sup>st</sup> Defendant which was obtained on 29<sup>th</sup> January 2024 is still valid in accordance with the law. It is also clear that the Court which granted the preservation order clearly ruled against the rescission of the order. It is also clear that the funds subject of the preservation order emanated from the Bilderberg account whose funds were believed to be proceeds of a crime. The issue of whether the Defendant is entitled to the funds subject of the preservation order therefore is a valid issue for determination.

19. If the injunction is not granted and the 1<sup>st</sup> Defendant is allowed to access the funds, no amount of damage can adequately compensate the Claimant in the event of success as the money will have dissipated. The 1<sup>st</sup> Defendant, however, can be compensated in the event that the Claimant has not succeeded in its claim. Considering the manner in which the 1<sup>st</sup> Defendant has pursued the money to the point of instituting fresh proceedings in the Commercial Division whilst being fully aware of the ruling of this court in *Financial Crimes Cause No. 1 of 2024* refusing to rescind the preservation order, it is only just that

the injunction be granted. It is in view of the above reasoning that I proceeded to grant the interlocutory injunction in favour of the Claimant.

20. The Court in *Financial Crimes Cause No. 1 of 2024* clearly held that the appropriate court to determine the validity of the preservation order is the court which granted the order. In the ruling in *Financial Crimes Cause No. 1 of 2024*, the court was fully aware of the ruling of Honourable Justice Manda in *Commercial Cause No. 160 of 2023* but still proceeded to find the application for rescission of the preservation order unmeritable. This ruling meant that the funds in the account would remain preserved until otherwise ordered by the court which made the preservation order. Despite the clear ruling of the court in *Financial Crimes Cause No. 1 of 2024*, the 1<sup>st</sup> Defendant decided to go to the Commercial Division of the High Court to obtain an order compelling the 2<sup>nd</sup> Defendant to release the money.
21. A few things that must be noted from the fact of going to the Commercial Division and obtaining an order compelling the 2<sup>nd</sup> Defendant Bank to release money subject of a preservation order granted by the **Financial Crimes Division of the High Court**. The first issue is as to the appropriate forum for dealing with applications challenging a freezing directive of the FIA or a preservation order granted by the Financial Crimes Court.
22. The process of withholding the 1<sup>st</sup> Defendant's money started with the issuance of a freezing directive by the FIA under section 23(4) of the Financial Crimes Act, 2017. Exhibit EM1 is the freezing directive. Later the Claimant obtained a preservation order before this court under *Financial Crimes Cause No. 1 of 2024*. The preservation order was obtained pursuant to section 65 of the Financial Crimes Act, 2017.
23. Section 6A(1) of the Courts Act establishes divisions of the High Court and it provides as follows:
  - (1) *The High Court shall have the following Divisions-*
    - (a) *the Civil Division which shall hear civil matters not provided for under another Division of the High Court,*
    - (b) ***the Commercial Division which shall hear any commercial matter,***
    - (c) *the Criminal Division which shall hear any criminal matter;*
    - (d) *the Family and Probate Division which shall hear any family or probate matter;*
    - (e) *the Revenue Division which shall hear any revenue matter; and*
    - (f) ***the Financial Crimes Division which shall hear any financial crime matter.***
  - (2) *Where a person commences a matter or makes an application in a division other than the appropriate division in accordance with this section, the*

*registrar shall, on his own volition or on application, immediately transfer the matter to the appropriate division.*

- (3) *The Courts may order that any costs arising from the process under subsection (2) shall be borne by the party who commenced the matter in an inappropriate division. [emphasis added].*

24. As to matters to be heard by each of the listed Divisions, section 2 of the Courts Act is clear. The section provides as follows;

*"civil matter" means a civil matter that is not a commercial, criminal, family or probate matter";*

*"commercial matter" means a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including-*

- a. the formation or governance of a business or commercial organization;*
- b. the contractual relationship of a business or commercial organization;*
- c. liabilities arising from commercial or business transactions;*
- d. the restructuring or payment of commercial debts;*
- e. the winding up of companies or bankruptcy of persons;*
- f. the enforcement or review of commercial arbitration award;*
- g. the enforcement of foreign judgments of commercial matters subject to the provisions of the law;*
- h. the supply or exchange of goods and services,-*
- i. banking, negotiable instruments, international credit and similar financial services;*
- j. insurance services; or*
- k. the operation of stock and foreign exchange markets,*

*in the event of doubt as to whether a matter is commercial or not the judge at the outset or during the course of the action, shall have power to resolve the issue";*

*"criminal matter" means a matter requiring a person to answer for an offence under any written law other than revenue law;*

*"family matter" means a civil matter which concerns the entry, subsistence and exit from a marriage, and incidental matters thereto;*

*"Financial crime matter" means a matter requiring a person to answer a criminal matter arising out of a financial crime and includes a matter under-*

- (a) the Financial Crimes Act, including any civil proceeding arising under Part VI thereof;*
- (b) the Corrupt Practices Act;*
- (c) Chapters X, XXXI, XXXII, XXXIII and XLI of the Penal Code;*
- (d) any financial service law as defined under the Financial Service Act;*

- (e) *the Public Finance Management Act;*
- (f) *the Public Procurement and Disposal of Public Assets Act;*
- (g) *the Companies Act; and*
- (h) *any other written law akin to offences under paragraphs (a) to (g);*

*"probate matter" means a civil matter which concerns succession to or inheritance of property and incidental matters;*

*"revenue matter" means a civil or criminal matter which concerns taxes, duties, fees, levies, fines or other monies imposed by or collected under the written laws set out under the Malawi Revenue Authority Act. [Emphasis added]*

25. As provided in section 6A(1) of the Courts Act, the Financial Crimes Division of the High Court which is mandated to hear any financial crime matter. Section 2 of the Courts Act defines a financial crime matter to include civil matters. On the interpretation of a financial crime matter, I found useful two decisions of my two senior brothers in the cases of ***George Kainja v. Director of Anti-Corruption Bureau and 2 Others***, Judicial Review Cause No. 48 of 2022, (HC, Civil Division, LL) and ***The State (on the Application of Xelite Stripes Limited, Orion Investment Limited and Ocean Industries Limited v. The Director of Anti-Corruption Bureau*** Judicial Review Cause No.1 of 2023 where the two courts comprehensively dealt with the question of jurisdiction of the Financial Crimes Division in civil matters including those matters not falling under Part VI of the Financial Crimes Act.
26. In the ***George Kainja v. Director of Anti-Corruption Bureau and 2 Others Case***, the Learned Judge had this to say:

*"In view of the foregoing and by reason thereof, I fully agree with the submissions by the 1st Defendant that the wording of the definition of "financial crime matter", particularly the "includes" part, is meant to leave no doubt that Parliament intends that the Financial Crimes Division should, to the exclusion of the other Divisions, entertain all matters relating to financial crimes be they criminal or civil, including such things as non-conviction based asset recovery forfeiture and judicial review of a decision, action, etc., stemming from a financial crime matter. With regard to judicial review, the Financial Crimes Division will simply be exercising powers or discharging duties that correspond to the supervisory jurisdiction of the High Court over tribunals or those exercising quasi-judicial functions. For the sake of completeness, a word about the paragraphs in the definition of "financial crime matter" might not be out of order. Paragraphs (a) to (h) inclusive fall within the phrase, which is in the latter part of the chapeau (opening words) of the definition, that is, "and includes a matter under." Any matter under any of the written laws referred to in paragraphs (a) to (h) inclusive qualifies as a financial crime matter. Having regard to the preceding analysis of the law and taking into consideration the fact that the substantive case of judicial review*

*has yet to take place, I am compelled to come to the conclusion that the judicial review matter for determination in this case fall[s] squarely within the purview of the Financial Crimes Division, and not the Civil Division or the other Divisions. In the premises, this matter is transferred to the Financial Crimes Division. It is so ordered.”*

27. In the *State (on the Application of Xelite Stripes Limited, Orion Investment Limited and Ocean Industries Limited v. The Director of Anti-Corruption Bureau Case*, Professor Kapindu J, fully agreed with the interpretation of Kenya J on the import of the term ‘*financial crime matter*’ as propounded in the *George Kainja v. Director of Anti-Corruption Bureau and 2 Others Case*. In the latter case, having found that the judicial review matter for determination in that case fell squarely within the purview of the Financial Crimes Division, and not the Civil Division or the other Divisions of the High Court, transferred the matter to the Financial Crimes Division.
28. In the *State (on the Application of Xelite Stripes Limited, Orion Investment Limited and Ocean Industries Limited v. The Director of Anti-Corruption Bureau Case* Professor Kapindu J., held that ‘although the Division is explicitly called the “Financial Crimes Division”, thus giving the impression that its primary focus is on criminal matters, Parliament has also conferred the Court with civil jurisdiction.’
29. Section 2 of the Courts Act specifically provides that a financial crime matter includes ‘**any civil proceedings arising under Part VI of the Financial Crimes Act**. A preservation order is granted under section 65 of the Financial Crimes Act which falls under the said Part VI of the Act. It should without doubt follow that matters challenging the granting of a preservation order are financial crime matters which specifically follow under the jurisdictions of the Financial Crimes Court.
30. Even if one was to consider a freezing directive which is issued under section 23(4) of the Financial Crimes Act which section is not in Part VI of the Act, I would still hold the view that the appropriate court to handle matters relating to a freezing directive falls under the jurisdiction of the Financial Crimes Court. The reason for this opinion being that the scheme of the law under the Financial Crimes Act is that after the issuance of the freezing directive, the FIA or any other competent authority may proceed to obtain a preservation order as it happened in the present case. The preservation order squarely falls under the jurisdiction of the Financial Crimes Court.
31. If matters to do with the freezing notice were to go to another Division of the High Court, yet the FIA or any competent authority can only obtain a preservation order in the Financial Crimes Division of the High Court, then confusion would ensue and this is exactly what

happened in the cases of *Bilderberg Limited and Dr. William Bilderberg v. Ecobank Malawi Limited and Financial Intelligence Authority (as an added party)* Commercial Cause No. 160 of 2022 (a matter before the Commercial Division) and *the Financial Intelligence Authority v. Dr. William Bilderberg and 10 Others, Financial Crimes Cause No 35 of 2023* (a matter before the Financial Crimes Division), and the present matter and between *The Financial Intelligence Authority v. Zahra Ali* Financial Crimes Cause No. 01 of 2024 and *Zahra Ali v First Capital Bank* Commercial Cause No. 52 of 2024 where we see preservation orders issued by the Financial Crimes Division are being set aside or being overridden by injunctions issued by the Commercial Division.

32. In the case of *The State (on the Application of Xelite Stripes Limited, Orion Investment Limited and Ocean Industries Limited v. The Director of Anti-Corruption Bureau* the court alluded to the fact that confusion may arise if civil matters relating to or directly connected to financial crime matters were first go to other Divisions other than the Financial Crimes Division to deal with certain issues where it held as follows:

*Confusion would easily result in instances where civil issues arising from, or relating to, or directly connected to financial crime matters which have to be dealt with or are being dealt with by the Financial Crimes Division, were to go to another Division, such as the Civil Division first for determination of certain issues. Examples would include civil matters related to the recovery of tainted property in connection with financial crimes or suspected financial crimes; or where there are financial crimes criminal proceedings and prosecutorial decisions in respect of the same are challenged by way of judicial review. If such civil proceedings, which are intractably connected with matters of financial crimes, were to be dealt with by another Division other than the Financial Crimes Division itself, chaotic case management on the part of the Courts would almost inevitably, result at some point. Parliament had the foresight to seek to avert such scenarios.*

33. The confusion envisaged in the above case is exactly what we see in the present case. Such confusion can and should be avoided if we are to uphold the integrity of the law, the court, and the justice system. The way to avoid such confusion is to let the Financial Crimes Division, being the Division mandated to handle financial crime matters, handle all matters relating to preservation orders, freezing directives or all other civil matters where the proceedings are intrinsically connected with financial crimes.
34. In the injunction issued in the case of *Zahra Ali v First Capital Bank* Commercial Cause No. 52 of 2024, reference was made to the cases of *Bilderberg Limited and Dr. William Bilderberg v. Ecobank Malawi Limited and Financial Intelligence Authority (as an*

*added party*)) **Commercial Cause No. 160 of 2022**, where it is said that the Court held that there were no preservation orders.

35. The orders of injunction being obtained in the Commercial Division whatever their bases may have been, their effect is not only varying but actually rescinding the preservation orders granted by the Financial Crimes Division. The Financial Crimes Act provides an aggrieved party with the liberty to challenge a preservation order. Under section 71 of the Act, the court which issued the preservation order is the one that has the jurisdiction to rescind or vary the preservation order and not any other court. This also comes out clear in the case of *The Director of Public Prosecutions and Another v. Norman Paulosi Chisale and 6 Others* MSCA Misc. Application No. 52 of 2022 where JA Mkandawire held as follows:

*Proceeding from here, it therefore means that a preservation order that is issued the Court under section 65 of the Financial Crimes Act can only be issued by the High Court or a Magistrate Court. Section 71 of the Financial Crimes Act further specifically gives the court which made the preservation order to vary or rescind the preservation order. This section also stipulates conditions which have to be satisfied by the Applicant before the Court can exercise its discretion. My understanding of the scheme as far as the Financial Crimes Act is concerned is that the Court in this case the High Court or Subordinate Court that issued the preservation order is the same court that has powers vested in it to entertain an application to vary or rescind the order.*

36. The starting point in addressing the confusion noted above would start with the Registrar at the time the matter is being commenced. Section 6A (2) of the Courts Act gives power to the Registrar to transfer proceedings to an appropriate Division where the proceedings have been commenced in the wrong Division. The section provides as follows;

*Where a person commences a matter or makes an application in a division other than the appropriate division in accordance with this section, the Registrar shall, on his own volition or on application, immediately transfer the matter to the appropriate division.*

37. Issuance of court summons or whatever originating process that is brought before the court is not merely an administrative function of the Registrar. It is a judicial function to which the Registrar must apply his mind. The power in section 6(2) of the Courts Act cannot be exercised properly where the Registrar issuing a court process does not apply his mind. In the matters referred to in this case which were handled by the Commercial Division of the High Court, if the Registrar issuing the processes had properly directed his or her mind to the law, the matters would have been transferred to the Financial Crimes Division.

38. Other than transfer of proceedings, the Registrar may also reject documents for where the document appears to the Court on its face to be an abuse of the process of the Court, or to be frivolous or vexatious. See Order 5 rules 9 to 13 of the CPR. This role of the Registrar was emphasised in the case of *The Democratic Progressive Party v. Attorney General (on behalf of the Office of the President of Malawi)* Constitutional Reference No. 3 of 2021 where the Court had this to say:

*As we have stated above, it is crucial for the Judiciary to be vigilantly on guard against this malpractice. To arrest this malpractice, we direct and order Registrars to diligently scrutinize originating processes and invoke Order 5, rules 9 to 13 of the CPR which empowers them to reject documents.*

39. A matter commenced in the wrong Division of the High Court ought to be transferred to the appropriate Division of the High Court. Although section 6A(2) of the Courts Act is to the effect that the power to transfer proceedings lies with the Registrar, even the Judge seized of the matter commenced in a wrong Division has the jurisdiction to transfer the proceedings to the appropriate Division (see case of *Re Shepherd Bushiri & Mary Bushiri*, Criminal Review Case No. 11 of 2021). In the *George Kainja v. Director of Anti-Corruption Bureau and 2 Others Case*, the question of appropriate forum was dealt with by the Judge and the matter was transferred to the Financial Crimes Division. Such jurisdiction can be exercised at any stage in the course of proceedings.

40. I have also considered the Supreme Court of Appeal decision in the case of *Hetherwick Mbale v. Hassan Maganga*, MSCA Civil Cause No. 21 of 2013. The Apex Court held that the question of jurisdiction can be dealt with by the Court at any stage of the proceedings and that, in any event, time never runs out for a Court, seized of a matter, to pronounce itself on the issue of jurisdiction.

41. Apart from the issue that the preservation order had been issued by the Financial Crimes Division and that under section 71 of the Financial Crimes Act, the preservation order could only be varied or rescinded by the Financial Crimes Division which granted the order, what is quite disturbing is that the issue of rescission of the preservation order under section 71 of the Financial Crimes Act was actually dealt with by the Financial Crimes Division in its ruling of 1<sup>st</sup> March 2024 in *Financial Crimes Cause No. 1 of 2024*. The 1<sup>st</sup> Defendant in his wisdom decided to avoid compliance with the ruling not by way of appealing but by going to the Commercial Division and obtaining an injunction to compel the 2<sup>nd</sup> Defendant to release the funds which were subject of the preservation order which the Financial Crimes Division refused to rescind.

42. The conduct of the 1<sup>st</sup> Defendant is not only strange but also wrong and unethical. It should never be the case that where one is aggrieved by the decision of the High Court in one Division, they should go to another Division of the High Court to get an injunction in respect of the same matter that is before the other Division of the High Court. As it happened in the present matter, it was clearly wrong for the 1<sup>st</sup> Defendant after being refused an order for rescission of the preservation order in the Financial Crimes Division of the High Court to then turn to the Commercial Division and obtain an injunction whose effect is the same as the application for rescission of the preservation which was already determined by the Financial Crimes Division.
43. The Claimant in paragraph 16 of the sworn statement in support of the application subject of this ruling argued that the conduct of the 1<sup>st</sup> Defendant was an abuse of court process and that the 1<sup>st</sup> Defendant was fleeing from the court with the rightful jurisdiction thereby engaging in forum shopping.
44. Forum shopping was defined as follows in the case of *Republic v Aubrey Sumbuleta*, High Court, Lilongwe District Registry, Criminal Case No. 11 of 2021, (unreported) the Court:  
*“In essence, this is a practice where litigants inexplicably avoid a court of competent jurisdiction which is nearer and to every objective mind more convenient for the parties, and instead take the matter to a rather distant court in order to deal with the matters.”*
45. In the case of *Bvalani & Kabwila v Electoral Commission and others*, Civil Cause No. 40 of 2020 High Court, Lilongwe District Registry (unreported) the Court termed the same practice “judicial tourism.” The applicants in that case, who were based in Lilongwe, had inexplicably filed their application at the Zomba District Registry. The Court in Zomba declined to entertain the matter and transferred it to the Lilongwe District Registry, which was deemed to be the most convenient forum to the parties. Commenting on the issue of forum shopping, the Court in Lilongwe said:  
*“This is not the first time when [eyebrows] have been raised by these courts in the way some matters are being filed in our courts especially the High Court. At times this has led to speculation by members of the public that court users are involved in forum shopping.”*
46. The High Court sitting as a Constitutional Court in the case of *The Democratic Progressive Party v. Attorney General (on behalf of the Office of the President of Malawi)* Constitutional Reference No. 3 of 2021 called the practice of forum shopping a vexing and unrelenting malpractice at all levels of the bar. Applying the two above cited cases, the Court in the *Democratic Progressive Party v. Attorney General (on behalf of the Office of the President of Malawi) Case* went on to state as follows:

*We agree with these sentiments and wish to add that this is one malpractice that fuels public perception of corruption within the judiciary. In this regard it is crucial for the Judiciary to be vigilantly on guard against this malpractice.*

*We raise this issue herein because we get the distinct impression that what has transpired in the matter before us is one instance of forum shopping.*

47. The 1<sup>st</sup> Defendant in his conduct in going to the Commercial Division in Commercial Cause No. 52 of 2024 gives the impression that she engaged in forum shopping. It is against such conduct that the Court in the ***Democratic Progressive Party v. Attorney General (on behalf of the Office of the President of Malawi) Case*** called upon the court to guard against. The granting of the injunction in the present matter is one way of guarding against such malpractice.
48. One may wish to ask as to why the Claimant in the present matter did not go to the Commercial Division to challenge the injunction granted in ***Commercial Cause No 56 of 2024***. The injunction granted was with immediate effect. The injunction related to property that was preserved by an order of the court in the Financial Crimes Division. That question has exercised my mind and I have come to the conclusion that in the circumstances of the chaotic situation created by the conduct of the 1<sup>st</sup> Defendant in choosing to challenge the preservation order and considering that the order of injunction was with immediate effect, the only way to preserve the status quo and ensure that the court is not abused is to allow the Claimant to proceed in the way he has done by commencing this present action.
49. In conclusion, I have considered that by the time, the Claimant would have gone to challenge the injunction, the money would have already been released to the 1<sup>st</sup> Defendant and the exercise of challenging the same would have been an academic one. I have also considered that the injunction was obtained in a wrong forum and the Claimant would be perpetuating a wrong to continue by going to the wrong forum to challenge the injunction.

Made in Chambers this <sup>8<sup>th</sup></sup> 4<sup>th</sup> Day of April, 2024 at Lilongwe.



**V. Palikena-Chipao**

**JUDGE**