

**Inaugural address to adjudicators and support staff in the
Zambian Judiciary by Chief Justice Hon Dr. Mumba Malila SC
delivered virtually on Wednesday 22 December 2021**

Earlier today, at a solemn ceremony of investiture of myself as the ninth Chief Justice and head of the Zambian Judiciary since independence, I took the oath of office before the President of the Republic of Zambia. I made that oath with great humility and gratitude to the Almighty God and the people of Zambia, exercising their sovereign authority through the Head of State who appointed me upon the recommendation of the Judicial Service Commission. As you are all by now aware, that Presidential appointment was yesterday approved by the people's representatives assembled in the National Assembly.

Each of the words in the oath I took today captures the essence of much of what should define all of us as adjudicators — independence, fairness, ability to defend and protect the constitution, the willingness to render service with integrity and competence, among others.

Now that I am in office I wish to set out my vision of the Zambian Judiciary during my tenure. This vision must, of course, be consistent with that of the Judiciary which is that of 'a just and accountable Judiciary guaranteeing justice for all' and is underpinned by our Constitution.

Before I do so, allow me to, on your behalf, extend my appreciation to my Lord the Deputy Chief Justice, Hon Mr. Michael Musonda SC for ably holding fort for five odd months since we lost our dear beloved Chief Justice, Hon Irene Chirwa-Mambilima, in Egypt last June. Her nearly six years of stewardship as the first female Chief Justice of Zambia gave this country a welcome, solid taste of the meaning of equality of sexes and gender neutral leadership in the Zambian Judiciary.

I wish also to express my sincere gratitude to those of you that sent congratulatory and goodwill messages on my appointment. To those who variously expressed their conviction that my appointment was merited and that I am probably a worthy successor to our departed Chief Justice, I can only say that I am truly humbled by your opinion. I will try my best to reciprocate your confidence in me by ensuring that my leadership of the Judiciary meets the people's expectations. With the help of God, the monumental task ahead shall be achieved. It remains my fervent hope that we shall all put the interests of the institution above self and work harmoniously together so as to provide justice to the people of Zambia.

Our Constitution is very clear. Judicial authority derives from the people and in our exercise of that authority we are enjoined to be just and to promote accountability. That our courts have jurisdiction in all matters concerning breach of the law, civil and criminal, as well as in the interpretation and enforcement of the Constitution, is beyond peradventure. I dare say that we

adjudicators at all levels of our court system have the arduous responsibility to act as neutral arbiters in disputes between citizens and the State and between private parties. We are the bulwark in the protection of the rule of law in our country as well as the defence of fundamental human rights and personal liberties for all our people.

In all this, public confidence in the judiciary is crucial. In fact it is the *sine qua non* to an effective judicial system which supports the rule of law that is in turn crucial to democracy and good governance. To quote from the late former Chief Justice of South Africa, Ishmael Mohamed:

The ultimate power of the courts must therefore, rest on the esteem in which the judiciary is held within the psyche and soul of a nation and the confidence it enjoys within the hearts and minds of potential litigants in search of justice. That esteem and that respect must substantially depend on the independence and integrity of judicial officers. No public figure anywhere, however otherwise popular, could afford to be seen to defy the order of a court which enjoys, within the nation, a perception of independence and integrity. His or he own future would then be in mortal jeopardy.¹

The pertinent question is whether we have discharged that responsibility well. Have we lived up to our constitutional obligation

¹ *Journal of the Judicial Officers Association of South Africa* 2(2000) 176

of performing our duties decorously and creditably? The candid answer, in my view, is a hesitant no. We have not always performed as well as we should. Our justice system is today in substantial discredit for fairly fathomable reasons. And it is no secret that lately the Judiciary has been under massive and unremitting criticism from members of the public. Very critical comments about the manner in which our courts, well some of them, have handled matters of immense public interest, especially those which implicate democratic governance and the rule of law, have been repeatedly ventilated publicly.

Pockets of the Zambian society, including our politicians, civil society organisations, lawyers, clergymen, litigants and accused persons, have not concealed their shrinking faith in the Zambian Judiciary as a sanctuary for the vindication of those principles which are prized in any true democracy namely, truth, justice, fair play and equality before the law. Rightly or wrongly some members of the public have accused the judiciary of failing the Zambian people in its role of impartial adjudication and resolute constitutional guardianship; that the Judiciary has in some instances been complicit in undermining the rule of law and entrenching a culture of impunity.

Times without number we have heard accusations that our Judiciary suffers political manipulation and compromise; that some judgments are motivated by considerations that are inconsistent with the judicial oath of office. Other public criticisms against us,

our decisions and processes, include our apparent lack of pace as manifested in sluggish or slow justice. Delays in the delivery of judgments and rulings and the long adjournments of cases have particularly infuriated litigants. Declining standards of adjudication, inefficient registries, primordial court room facilities and procedures, substandard judgments which occasionally lack in clarity and are poorly articulated; the indiscreet use of authorities and the evident failure, in some cases, to keep on top of developments in the law, have in their own way provoked a degree of discomfiture amongst stakeholders. And whether these allegations are founded or not is neither here nor there. The point is that much of what has happened over the years to dampen public confidence in the Zambian Judiciary is attributable to these very allegations.

When the comments aired publicly so far denouncing the Judiciary are examined objectively, one notices that they have undercurrents of considerable frustration on the part of their makers. Let me be clear. Many of these adverse vibes, whether or not they are indeed true, can properly be ascribed to attitudes of individual courts, or a handful of adjudicators in those courts, more than anything else. And make no mistake, the majority of our adjudicators are genuinely professional, ethical, diligent, honourable and hardworking men and women and yet the conduct of the few decadent ones is used to make generalized criticisms of the entire Judiciary.

Speaking for myself, the foregoing notwithstanding, the unremitting public denigration of our work as judges, which has led to the loss of public confidence in our courts and the systems we administer can only be ignored or wished away at our own peril. The people of Zambia to whom we should properly be accountable no doubt deserve better.

My vision of the Judiciary

And so the vision I have of the Judiciary under my charge as Chief Justice is that of a transformed institution that will reclaim public trust and confidence; an institution that is truly a co-equal to the other arms of government, consolidated in its independence, especially financial independence; an establishment that will prime the fair administration of justice for all anchored on the core values of impartiality, independence, accountability, ethical and professional practices, fair procedures and respect for human rights; a judiciary that society will identify with as a dependable ally in vindicating their rights and promoting the rule of law.

My wish, dear colleagues, is to see a Judiciary where all staff (adjudicators and support staff alike) is unquestionably properly qualified, competent, committed, ethical and honest; where they reflect on their performance and invest in their own professional development with the Judiciary affording them the

scope and opportunities for this. A qualified and competent adjudicator is often times confident and independent too.

In my time I crave to work towards and to see a Judiciary where there is improved access to justice for all; where unacceptable barriers to effective access to justice by our people are removed through the provision of adequate infrastructure, logistics — electronically, physically or by telephone; where the courts are accessed digitally while for those who are not fully able to take advantage of digital access, cheaper alternatives are facilitated.

I long for improved administrative capacity and the efficient management of the Judiciary's resources so that its concern for court users determines the way it carries out its work. I yearn for a Judiciary that is diverse and safeguards inclusiveness, that is to say, employees from all parts of our country feel free to be themselves in the organisation.

In less elevated language my vision is of a Judiciary where the notoriety of current criticisms of the institution, encouraged as they are principally by a culture of slackness and prevarication, are transformed into a chorus of plaudits and admiration for an institution truly offering a fair and responsive system of justice, easily accessible — one whose decisions are based on sound reasoning delivered timely and predictably by qualified adjudicators; one which is effectively managed and which fully utilizes technological advancement; an effective and sustainable

organisation which focuses on fulfilling its duties to society. I intend to make these the hallmarks of my tenure as Chief Justice.

As you will appreciate from all this, in order to achieve the ideals of the Judiciary we crave for we must all as workers in the Judiciary embrace and implement a series of administrative and legal reforms. Changes across the entire breadth of the Judiciary are what are required to improve the quality of our legal system and strengthen the capacity of judges and other adjudicators to face up to the existing challenges. Every adjudicator and support staff, however, has an individual role to play in trying to assist the Judiciary to succeed in reforming the system. Personal discipline, appropriate work attitude and commitment, are key to the success of the necessary reform agenda of our Judiciary.

Unwavering administrative action and constitutional and legislative changes will doubtlessly entail an injection of financial resources. For example the Constitutionally directed program of devolving the Court of Appeal to provincial centers and the progressive transformation of our Local Courts into courts of record, as well as the administrative imperative of positioning of resident judges in each of the provincial capitals in Western, Eastern, Northwestern, Northern, Muchinga and Luapula Provinces, which presently do not have them, will require an initial provision of funds but will, in the long run, will help the Judiciary save the considerable sums of money that are expended on circuiting to these centers. Yet, these changes will also enhance closer supervision of Subordinate Courts

by the High Court and improve access to justice and the speedy disposition of cases.

The disappointment and frustration experienced by the Zambian people arising from the reconfiguration and expansion of the judicial estate under the 2016 Constitutional amendment cannot be treated as a matter of little importance nor can it be denied that there are still nagging credibility deficits arising directly from our operation of the new court structure following the Constitution Amendment Act No 2 of 2016. Realigning and streamlining some of our courts to make justice delivery more effective and responsive to the expectations of the Zambian people may be an unavoidable imperative. This will require consultation followed by constitutional and statutory changes. I remain convinced, however, that in the immediate term reforming the Judiciary from many of its present malaise necessitates first and foremost a fundamental mindset and attitude change on the part of our adjudicators and support staff.

If, as we must, we are to redeem the image of the Judiciary and strengthen its accountability to the people of Zambia, it is critical that we should all individually and collectively make a concerted effort to deliver an improved quality of service to users of our courts. In this connection, the comportment of our adjudicators is particularly critical. It is vitally important that all adjudicators are decent individuals, honest in their work and possessing of integrity and a sound knowledge of the law. They must consciously avoid placing themselves in situations where they render questionable

judgments which, owing to obvious uncertainties or want of finality in their import, open doors for speculation and further litigation, or decisions which are inconclusive in their orders, or which contradict our own existing precedents, or are a clear affront to common sense and inconsistent in every respect with logic, or which are, for that matter, unimplementable and, even less, judgments that go against clear provisions of the written law.

As adjudicators we must demonstrate through our judgments that we understand the issues at play in any dispute before us and that we are familiar with applicable principles. We must ensure that our judgments are properly motivated. That is the only way the principles of judicial precedents and stare decisis can operate so as to promote even-handedness, predictability and consistency in our decisions and thus contribute to actual and perceived integrity of the judicial process.

Engraining the rule of law should be the overriding consideration of judicial policy. This means that the application of laws of the land must occur, in the solemn words of the judicial oath, without fear or favour, affection or ill will and therefore without regard to the political, religious or ethnic affiliation of any citizen of the land. None of these factors should be the inspiration for any judicial decision. And the rule of law requires that the criminal process, especially, is invoked against the citizen for no other consideration, but their involvement in allegedly criminal activity. It also requires

that accused persons are tried with due regard to fair trial provisions. To do otherwise is to subvert or pervert it.

In keeping with the finest traditions of the Bench I urge each one of us adjudicators, ably assisted by support staff, to ensure that we do not just pay lip service to the rule of law: we should make it an operating guide for the orderly development of our country, where the separation of powers and checks and balances are made real and meaningful; where public officials behave with honesty and integrity; and where law and order provide a strong basis for our social and economic development so that the dreams of freedom and prosperity that energised the great patriots who founded our nation can find expression in this generation and those to come.

There is a perception that judicial independence entails that the doings of individual adjudicators cannot be scrutinised without occasioning violence to the much acclaimed independence of those adjudicators. I agree that the judicial independence of individual adjudicators must be respected at all costs. I urge you honourable adjudicators to boldly assert your own independence and this should be evident in the decisions that you pass. Lack of independent-mindedness and honesty compromises fairness, impartiality and integrity of the adjudicator. Develop a passion for what you do, for only then will you be devoted to it. Lack of dedication to duty goes hand in hand with absence of self-discipline. Performing judicial functions competently, impartially

and independently helps avert the creation of an impression that adjudicators collude with any party to litigation or other interested entities to deliver predetermined outcomes.

Yet, there is also a view that impunity and unaccountability may have taken root among our adjudicators owing to what some people view as distant supervision. Please bear with me if I appear to veer off slightly from the footsteps of the eight previous occupants of this office. I think that under both the Constitution and the Judicial Code of Conduct Act, there is no room for misbehaviour under the guise of exercising judicial independence and failure to perform properly the judicial function which the public has so heavily invested in and consistently voiced out on. I thus intend to carry out actively and passionately, the responsibility entrusted in me as Chief Justice under Article 136 of the Constitution to ensure that judges and judicial officers perform the judicial function with dignity, propriety and integrity; that they perform their responsibility without fear, favour or bias. I urge all adjudicators to take heed.

Those with pending disciplinary proceedings will be expeditiously afforded the opportunity to clear their names. In the same vein those who are perpetually underperforming or otherwise failing to deliver or to discharge their responsibility competently, diligently and with integrity can expect to answer questions before the Judicial Complaints Commission.

Curbing delays in the delivery of judgments may necessitate reforming our rules in order that the prescription of deadlines for hearing and delivering of quality judgments is also aligned to the Judicial Code of Conduct so that delinquent adjudicators are made to account. Additionally a performance appraisal system based on the returns and the qualitative presentation of adjudicators' work will be introduced so that adjudicators consistently performing badly do not escape the notice of supervising officers.

Let us all remain unfailingly true to the values which will help our Judiciary to flourish, namely honesty, efficiency, self-discipline, impartiality, punctuality, dedication to duty and transparency. I ask for your unflinching support as I begin to discharge the responsibility of this office. I remain confident that with the cooperation of all, an unbending sense of duty and an everlasting relish for hard work we can together succeed in reforming the image of the Judiciary and creating an institution that performs to the expectation of the Zambian people. Rest assured that my doors will remain open to all to discuss any matters that may help us to deliver quality service to our people.

I thank you for your attention.