



REPUBLIC OF ZAMBIA

THE JUDICIARY

Inaugural Lucy Sichone Memorial Lecture

Given by

The Hon Chief Justice Dr Mumba Malila on 14 January 2022

At Lusaka

The Inaugural Lucy Sichone Memorial Lecture delivered by the Hon Chief Justice of the Republic of Zambia Hon Dr. Mumba Malila on 13 January 2022

The Executive Director, Chapter One Foundation, distinguished ladies and gentlemen.

I am thrilled and, dare I say it, highly elated to have been invited to give the inaugural Lucy Sichone Memorial Lecture. I understand that these memorial lectures are intended firstly, to honour the life, work and ideas of our late compatriot and illustrious civil rights activist — the redoubtable Lucy Sichone. Secondly, to foster critical reflections and the sharing of ideas and experiences around consciousness of civil liberties and good governance issues in our country.

For a variety of reasons, I feel greatly privileged that the lot to give this maiden lecture has fallen on me. Not the least of these reasons is that Lucy Sichone was a fearless activist whom I personally admired immensely. This highly gifted individual was an early example of a new breed of committed civil rights activists that had emerged during the first decade of my professional life.

I am grateful to Linda Kasonde, the Executive Director of Chapter One Foundation, for the honour. Yet this honour and delight have been somewhat diluted by a badgering anxiety about my ability to pioneer successfully and fittingly for the eminent, charismatic, energetic and brave civil rights advocate that Lucy Sichone was.

Many in this generation will recall Lucy Sichone for being at the coalface in the efforts to create civic awareness on the part of many of our underprivileged people whose human rights and fundamental liberties were trampled upon. On their behalf, she determined to hold the governors accountable. She announced

her presence on the Zambian civil rights landscape following a series of unfortunate experiences that she personally suffered after the death of her first husband. They included the ugly phenomenon of ‘property grabbing,’ and the patrilineal practice in her society whereby children are taken to belong to the husband’s side of the family, which is assumed to have a greater say in their upbringing and wellbeing than their biological mother, especially in the event of their father’s death. Lucy Sichone fiercely advocated for discarding these attitudes and practices. She urged people to be the vanguard of change of many discriminatory practices and stereotypes such as misogyny and patriarchy. She did this through her writings, speeches and deeds which, when she felt like it, included lonesome demonstrations.

In confirming that her commitment to human rights was unimpeachable, she famously wrote in her weekly column in the Post Newspaper that:

“The freedoms enshrined in the Bill of Rights make it a sacred duty for me to defend them to the death”

In 1993, she formalised what was initially an informal human rights literacy project by establishing a not-for-profit organization — the Zambia Civic Education Association (ZCEA). It became the new vehicle through which the creation of awareness for human and democratic rights was undertaken. That association quickly established a network of civic education clubs in secondary schools around the country. I understand, true to her dreams, this Association continues to exist today alongside many other entities that have swarmed the civil society space, offering one form or another of civic education and human rights awareness programmes.

Besides being an alumnus of the prestigious Oxford University where she read Politics, Philosophy and Economics, this great intellectual, had earlier on read law at the University of Zambia but deferred taking the Law Practice Institute course — the ZIALE program equivalent today. When she chose to do so in

1993, I had the humble privilege of being her teacher in a course that bears no obvious connection with human rights — Commercial Transactions.

She was a vocal spirit and it was impossible to keep her quiet when she felt passionately about an issue. Make no mistake; my being one of her instructors at the Law Practice Institute, far from giving me any bragging rights, only enhanced my veneration for a woman in our country's history who has the distinction of having bagged many firsts. As we know, she was the first Zambian female to receive the esteemed Rhodes scholarship; the first woman to have her portrait displayed on the walls of Rhodes House and the first Zambian to win the International Women Media Foundation Courage in Journalism Award in 1996.

It is thus entirely appropriate and fitting that we should hold these public lectures to commemorate and celebrate her courage, leadership and her intellectual valour.

I have chosen to speak on the topic 'Access to Justice in Zambia in the Wake of Increased Civil Rights Awareness.' I admit that beyond the reference to civil rights, the link between the subject of my lecture and Lucy Sichone may perhaps not be so apparent. Civic education, which Lucy Sichone so passionately championed, in truth suggests human rights activism. Human rights activism itself may send shivers of discomfort down the spines of many because it often times invokes images of persons unreasonably agitating, often outside the law, their perceived entitlement to certain rights.

When considered in that context, and alongside the regular work of the Judiciary, those images do not seem to be anywhere close to the staple diet of the courts. What I mean is that the perception which human rights activism portrays is one that does not sit easy, at least at first blush, with the work of courts let alone a Chief Justice of a country. Yet, I have chosen this topic for, I think, two — or perhaps two and a half — good reasons.

The first is the obvious one of the relevance to our time of the topic of access to justice. As many of us are aware, the member states of the United Nations did in 2015 adopt, by resolution, the 2030 agenda for Sustainable Development Goals (SDGs). That momentous decision provides the plan for peace and prosperity for all people and the planet on which we live now and in years to come. Of the 17 SDGs the relevant one for purposes of this discussion is goal number 16 which aims at ending violence, promoting the rule of law, strengthening institutions and increasing access to justice. Lucy Sichone would no doubt have liked this SDG because, in her words and deeds, she demonstrated acute awareness that to build a good society where the strong are just and the weak are protected, it takes, as a precondition, the cultivation of a climate of legality, guaranteeing justice for all, and maintaining peace and security.

Second, access to justice is irrefutably a significant gauge for assessing not only the rule of law in any society but also the quality of governance in that society. Lucy Sichone deeply valued the rule of law. She well understood that to fully attain the rule of law, people needed to have unimpeded access to justice. This required the use of both informal (non-state) and formal (state) justice mechanisms grounded in strict compliance with human rights standards. It is a truism that today, as was the case in Lucy Sichone's time, large segments of our population still have no access justice. There is thus need to extend the reach of formal and informal rule of law promoting institutions to the population by removing barriers to their use. I will say a little more about the rule of law shortly.

Lastly, but if a reason at all, this can only be regarded as half a reason, is that on 24 August this year, it will be 24 years since the passing on of this iconic civil rights crusader. Since she has been gone, human rights awareness seems to have increased, if the number of disputes involving human rights informed complainants that our courts and other institutions are registering, is anything to go by. Yet, oddly access to justice is still unavailable to many more of the

people that Lucy Sichone would have cared for. Additionally the increased civic awareness creation that we see today is qualitatively different from the hands on, get involved, activism that Lucy Sichone engaged in. In my estimation, the lecture in her honour at this time carries with it a sense of historical symbolism, underlining the necessity of a continuum between the practical efforts to create civil rights awareness which Lucy Sichone so eloquently advocated for and the new demands of our time.

Lucy Sichone understood that an ignorant citizenry was ill equipped to demand accountability on the part of the governors. She saw it as part of the duty of every citizen to be pro-active in providing checks on those entrusted with political power as well as those who exercised governance authority at different levels. She believed that those who, like herself, had the privilege of getting an education and were thus able to articulate the grievances of the less privileged with the political and governance order, should take up the cudgels and both sensitize the uninformed and lead in the accountability process.

She had a broad interest in the welfare of the community, especially the weaker members of it. She was a vociferous advocate of the rule of law too. She believed, like some of us do, that respect for the rule of law is a precondition for virtually everything — from improving respect for human rights to enabling economic growth; from an improved and conducive business environment, to helping to win the war on poverty. She fully appreciated the interface between civic awareness, access to justice and human rights protection. She well understood that only when individuals have access to the courts and other established grievance mechanisms can they effectively espouse and seek the protection of their basic rights.

But perhaps we need to ask the question what, after all, do we mean by access to justice? Broadly the term access to justice can mean pretty much what one wants it to mean. I, however, think there are two main senses in which the term access to justice can be employed. In its narrower sense, it is often

considered to be co-extensive with access to the law courts and other legal and institutional structures such as police stations, the Human Rights Commission, the Public Protector, the Judicial Complaints Commission, the Police Public Complaints Authority, mediation and arbitration processes and other existing institutions in a system to which a citizens may report grievances and begin the process of seeking enforcement or protection of their basic rights.

In its wider context, access to justice entails the opportunity to use the political order, and to share in the benefits accruing from the social and economic developments in a country. This implies the ability to have social and distributive justice. Without access to justice in this sense, it is impossible to enjoy and ensure the realisation of any right, whether civil, political or economic.

Lucy Sichone understood access to justice in both senses and cared deeply about it. More significantly, she appreciated that some legal and institutional mechanisms available to achieve particular objectives, for example, the police and the Public Order Act, which the Police administered rather indiscriminately, did in fact constitute formidable obstacles to the promotion and protection of human rights and thus were an impediment to access to justice. She was quite prepared to defy and bypass some of these as we saw in August 1997 when she staged a lonesome demonstration at the Lusaka International Airport in protest against the shooting of former President Kenneth Kaunda and renowned human rights lawyer cum politician, Roger Chongwe in Kabwe.

Many of us also recall the somewhat daring incident when she parked her vehicle across the road to block a government minister's motor vehicle. She had a message to deliver to him regarding the plight of women engaged in crushing stones for a living. The government was distressing these stone crushers on the pretext that it was concerned about their health.

In her work as a human rights lawyer and civil rights crusader Lucy Sichone was fully alive to the fact that although justice could, and often occurred outside the court room, frequently it was only when individuals ultimately have unimpeded access to the courts that they can espouse and seek effective protection of their basic rights. In this regard the disposition of courts and their processes needed to be dependable. Lucy Sichone appreciated that the independence of the judiciary was a cornerstone for access to justice and that any access to the courts that could not guarantee fair outcomes was an exercise in futility. She thus saw it as part of her civic responsibility to defend the independence of the Judiciary and to protect it from vicious and unwarranted attacks.

We, in this regard, recall how on 27 February 1996, Lucy Sichone, then a Post Newspaper columnist, together with other like-minded gallant compatriots, Fred M'membe, then Managing Editor of the Post News Paper, and the late Bright Mwape, a prolific journalist in his time, were by decree of the then Speaker of Parliament, Robinson Nabulyato (now late) declared to be in 'contempt of parliament' for writing articles including one titled "*Miyanda has forgotten about need for justice*" in which they questioned the then Vice President Godfrey Miyanda's integrity when he, on the floor of Parliament, criticised the Supreme Court for its 10 January 1996 decision in *Christine Mulundika v The People*.

The Court had in that case held that sections of the Public Order Act, which required people to obtain police permits for public gatherings, meetings or processions, were unconstitutional. Vice President Miyanda had inferred in his debate that the Supreme Court, in complete disregard to the need to be independent, had unreasonably made that decision for the benefit and appeasement of ex-president Kenneth Kaunda, who had been charged, together with seven others, with illegal assembly.

Along with Fred M'membe and Bright Mwape, Lucy Sichone came to the defence of the independence of the Judiciary, when she openly accused the Vice President of intimidating the Judiciary. The trio believed that justice would be impaired if the Judiciary was not free and that statements made by the Vice President were designed to undermine the integrity of the Judiciary. The Vice president responded by charging that the articles were contemptuous of Parliament and breached parliamentary privilege. For their courage, the three were quite ironically denied justice by being sentenced unheard by Parliament to indefinite imprisonment under the National Assembly (Powers and Privileges) Act.

Such was her courage and commitment to the independence of the Judiciary.

Our own distinguished political historian and analyst, Sishuwa Sishuwa, himself an Oxford graduate, confessed that:

'It is impossible to summarise her [Lucy Sichone's] life as an activist, a politician and lawyer in a few words, but it was as if she knew that her life would be short and that she had to make every moment count. Although she neither sought nor occupied public office, Lucy constructively affected it through activism ... in a manner that embodied the very essence of public life: selfless service, capacity for effective leadership and moral force and character.'

It is beyond dispute that in addition to the judiciary being independent, access to justice will only be meaningful if certain basic infrastructure is in place and are manned by an adequate number of quality personnel. For instance, where the courts are not sufficiently manned or manned by men and women who are morally wicked, then real access to justice can hardly be guarantee. Indeed, corrupt judicial officers are a grave inhibition to the fulfillment of justice even where physical or other infrastructure is in place.

Access to justice is not determined by the user friendly procedural mechanism in place for the resolution of disputes either, nor is it indeed only determined by the moral quality of the dispensers of justice. All these are important; as important as other factors such as the physical conditions of the premises where justice is dispensed. For example, do the premises guarantee the security of those seeking justice or assisting it? Has it got facilities for differently abled persons coming to it in search of justice? What is the quality of the justice itself? What period does it takes for its delivery? Are the general principles of due process? What about affordability in terms of the cost of seeking justice as in time and money? Are there quality legal advisers that assist those seeking justice? What about the probity and impartiality of operatives of the system?

To have true access to justice we need to remove barriers to both quantity and quality. We need to deal with obstacles which are financial, geographic, logistical, or gender-specific in character. Justice systems that are remote, unaffordable, slow, or incomprehensible to the public effectively deny legal protection. Access to justice requires more legal aid services and prepared defense lawyers; more citizen-friendly court staff, more reasonable hours and better information about the justice system. Not only that, the justice system ought to be linguistically available with local language proceedings or the provision of interpretation services.

Where courthouses and police stations only exist in urban, populated areas, or are few and far between, there are somber question marks about access to justice. To enhance access to justice there is need for legal aid, legal information centers that offer free or low-cost legal advice and representation, in much the same way that Lucy Sichone did when she represented several displaced villagers who had been accused of squatting and victims of property grabbing in court as pro bono clients. There will be enhanced access to justice when projects that train people to represent themselves, and paralegal-based

projects that train and employ people to serve as advocates and mediators are undertaken.

For the population to access justice, they must understand their rights and the means for claiming them. For most people outside the line of rail, the laws and the formal justice system are alien institutions. They fear them or do not understand them. Legal awareness helps counter this misunderstanding and promotes access to justice. Legal awareness campaigns can be conducted by the state but they are most effective when conducted by civil society at a grassroots level or through the media. This is what Lucy Sichone's Civic Education Association was all about.

In sum Lucy Sichone appreciated that there is no access to justice where citizens (especially marginalised groups) fear the system, see it as alien, and do not avail themselves of its services. Where the justice system is financially unreachable; where individuals have no lawyers; where they do not have information or knowledge of rights; or where the procedures are complex, there may in truth be no proper access to justice.

Let me conclude by reiterating that the elastic concept of access to justice involves normative legal protection, awareness of civic rights and duties, availability of quality legal aid services and legal aid counsel and properly operational adjudication and enforcement functions. Access to justice supports sustainable peace by affording the population a smart alternative to violence in resolving personal and political disputes. If people do not feel that their grievances will be addressed in an efficient and timely manner through a legitimate system of justice, they may resort to violent alternatives. Impeded access to justice encourages a culture of impunity and unaccountability. The realisation of this grim reality must have animated Lucy Sichone's work as a human rights activist and a civic awareness campaigner.

She was a giant in what she did. She set a difficult example of dedication to cause and loyalty to principle. In his tribute to Lucy Sichone a year before his death in 1999, the illustrious journalist, Bright Mwape, said of her selfless sacrifice:

‘Lucy made herself a spectacle for bemused lesser mortals who clapped and marveled at her courage without enough stamina to lend a hand. She fought battles to defend the lives of others even when her own was failing her. We are a rhetoric people and that is what Lucy was not. When will another Lucy live?’

Bright Mwape would have been considerably consoled to know that there are a rising crop of patriots in our midst who, like Lucy Sichone, have demonstrated unflinching love for this country and are, at great sacrifice, engaged in civil rights awareness and the fight for good governance, human rights and the rule of law. They have our admiration and cheer. We remain ever hopeful that another Lucy will live.

Thank you all for listening.