

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



WELCOME ADDRESS

BY THE

HONOURABLE MR JUSTICE L. MALABA, CHIEF

JUSTICE OF THE REPUBLIC OF ZIMBABWE

AT

THE END OF 2019 SECOND TERM SYMPOSIUM,

LEOPARD ROCK, VUMBA

11-14 SEPTEMBER 2019

Salutations-

1. The Deputy Chief Justice, Honourable Mrs. Justice Elizabeth Gwaunza and Judges of the Constitutional and Supreme Court here present;
2. The Judge President of the High Court, the Honourable Mr Justice George M. Chiweshe and Judges of the High Court,
3. Senior Judge in charge of the Labour Court, Ms G. Mhuri and Judges of the Labour Court and the Administrative Court of Zimbabwe;
4. The Director of the Africa Regional Programme of the International Commission of Jurists, Mr Arnold Tsunga;
5. Our external resource persons, Professor Lovemore Madhuku; Mr Abraham K. Maguchu and Mr Caleb Mucheche;
6. Members of the Judicial Service Commission Secretariat here present;
7. Ladies and gentlemen;

It is my privilege to welcome you to the 2019 end of second term Judges' Symposium.

As has become our tradition for the past seven years, Judges come together at the end of each term to dialogue on how to improve the effectiveness and efficiency in the justice delivery system. This is a lasting tradition which has provided a platform for continuous professional development of the bench and has facilitated networking amongst Judges from all courts.

Over the years, Judges have been trained on various legal principles and have also taken the opportunity to debate and address issues affecting the effectiveness and efficiency of the courts.

This forum is an opportunity for the judiciary to come together to collectively review, reflect and refine our approach to the discharge of our constitutional mandate and bring us closer to achieving our vision of delivering world class justice.

The theme for this edition of the symposium is; **‘Core-skilling: Towards a Human Rights Jurisprudence’**.

This theme is at the heart of the role of an independent and effective judiciary. It arises from the expansion of human rights protected in our jurisdiction. In particular, the 2013 Constitution ushered in an

expanded Bill of Rights guaranteeing wider protection of rights than its precursor.

The judiciary has the supreme responsibility to safeguard and enforce the rights of the people guaranteed by the Constitution. It has an important role to play in safeguarding and protecting the Constitution and its values and ensuring the consolidation of democracy and a realisation of a better life for all. We are the guardians of the Constitution and we are under an obligation to interpret and protect it through the development of a sound human rights jurisprudence.

The judiciary is committed to the role it has to play in the protection of human rights. This commitment is evident from the development of our local jurisprudence in respect of human rights cases before the Courts in recent years. Since the new Constitution was ushered in, several important judgements have been delivered in this respect. However we must do more. Development of progressive jurisprudence plays a fundamental role, not only in the protection of human rights but sets a benchmark for the enforcement of the rights and freedoms enshrined in the Constitution. The judiciary is the first line of defence against violations of human rights, both actual and threatened, and it is a role

that we must understand, embrace and develop. I cannot over emphasise that we are the custodians of the Constitution.

Traditionally, human rights issues have always been a subject of much debate and have in some instances been very emotive. This is expected given that the respect and protection of human rights is the cornerstone of any functional democracy.

International jurisprudence on human rights is fast developing. The approach to the adjudication of issues surrounding human rights is transforming. It is our duty as a judiciary to ensure that we keep abreast with these developments. For this reason, the theme for this symposium is appropriate. It is important for Judges to share experiences and exchange notes on this very important issue.

Honourable Judges and distinguished delegates, the judiciary exercises its powers through the constitutionally entrenched judicial authority. These powers are derived from the people of Zimbabwe. It is to the people of Zimbabwe that the judiciary is fully accountable.

The judiciary must show a profound understanding of the Constitutional imperatives. It must reflect a progressive interpretation of the Constitution to preserve the rights it is mandated to protect.

It is through forums like this, that the members of the judiciary can come together to enhance our understanding of the Constitution and the expectations of society regarding the judiciary. Learning is a never ending journey.

We want to foster a culture of open and candid discourse of the issues affecting the judiciary in its delivery of justice. Where our shortcomings have been identified we must find solutions to address them.

The structure of the programme for this symposium includes training to equip the judiciary with core skills for efficient and effective justice delivery. This includes presentations on judgment writing and court orders as well as break away sessions dealing with substantive topics. These sessions are aimed at giving judges an opportunity to zero in and address issues that affect the judiciary's core business and judges' day to day discharge of their duties both in Court and in Chambers.

The programme will also include sessions relating to performance appraisals and the need for a more effective system of appraisal. These discussions on performance appraisals will be led by the Deputy Chief Justice with a view for judges to assume ownership of the manner in

which we appraise ourselves and identify our achievements and areas for improvement. It is the only way we can fully and honestly account to the people of Zimbabwe whose interests we are mandated to protect and serve.

We must be honest with ourselves about where we are, where we need to be and how best we can achieve optimum performance. We owe it to ourselves as the judiciary and to the people of Zimbabwe.

Let me also take the opportunity to apprise you on some the developments that are taking place in the organisation.

ESTABLISHMENT OF THE RESEARCH CENTRE

In 2011 the Judicial Service Commission established the Legal Research Department. The purpose of the department is to provide a resource facility for the judiciary.

This department has been active in the Supreme Court where each Judge now has a researcher attached to him or her. The goal is to extend the use of qualified research assistants to all Courts. It has always been the vision of the Commission to ensure that Judges at all courts have researchers to assist with legal research and provide resource support.

The use of Research Assistants has been adopted by the judiciary in many jurisdictions and has been positively appraised as contributing to judicial efficiency and effectiveness. Properly qualified and resourced assistants contribute immensely to the delivery of judgements and greatly reduce research time for the judges. It is the JSC's vision that our judiciary be fully equipped to dispense justice. The use of research assistants should go a long way to achieving this.

In pursuit of this vision, we have introduced Judges' Assistants in the High Court and the Labour Court. To implement this, qualified legal practitioners replaced the Judges' Clerks.

I am aware that while most of the Judges in the High Court currently have qualified lawyers as assistants, the number is still low in the Labour Court. We are working towards ensuring that all judges benefit from this initiative and ask that those who are yet to receive the benefit of qualified assistants bear with us as we take necessary measures to fully implement the initiative.

I am also aware that prior to the introduction of the qualified assistants, the traditional role of judge's clerks was administrative in nature. This

involved purely clerical work like setting down of matters, keeping of diaries, communicating with the registry and parties to litigation.

Currently, some judges have already begun utilising their assistants for research whilst others still use their assistants for administrative and clerical tasks in the traditional manner.

We have taken the position that the legal skills of these qualified assistants must be put to use. Judges should embrace their assistants and the help they are disposed to offer for research and legal resourcing. They have been hired specifically for their qualifications and we intend to undertake continuous and extensive training of all assistants to ensure that the judiciary receives the full value from their services.

The JSC has already commenced the training programme for the Research Assistants. Recently members of academia and the judiciary assisted in an intensive research training session for all researchers and judge's assistants.

In October we will be sending twenty of our research assistants to Cape Town for training on research in line with international standards.

I once again appeal to all judges to utilise the research skills that the Assistants have been equipped with. The Commission has invested in

training the Assistants for your benefit. I implore you to take full advantage of their training. I am confident that it will contribute to the improvement of the quality and quantity of judgements from all of us.

As I have said, it is our intention to ensure that every judge has a qualified research Assistant attached to his or her Chambers. This is the ideal situation. Resources permitting, this should be implemented soon.

However, in the meantime, we have introduced a research centre at JSC Head Office to service and assist all judges who are yet to be allocated qualified assistants. The job of the research team will be to receive and promptly action requests for research opinions from all members of the judiciary. The facility can only serve to improve delivery of quality justice in our courts

I urge all judges to utilise this facility whilst we make permanent arrangements for individual assistants for all judges.

WORKLOAD

I applaud the efforts of all members of the judiciary towards the discharge of their duties and the general overall performance of the Courts. I am aware that the unbearable workload remains a cause for concern for our judges, particularly in the High Court.

We have made appointments to ease the burden on the Courts and will continue with the efforts to ensure that the judiciary is better resourced. This past term two Judges were elevated to the Supreme Court and five Judges were appointed to the High Court. Three acting judges have been appointed to the Fiscal and Tax Appeals Division of the High Court.

In addition, several assessors were recruited to assist in the High Court. Eight Assessors were recruited for the Fiscal and Tax Appeals Division whilst four Assessors were recruited for the High Court Hwange Circuit.

All these efforts are borne out of the realisation of the harsh conditions that our Judges have been working under. It is hoped that these appointments will go a long way in alleviating the pressure on the current bench.

The JSC has also proposed and recommended a Judicial Laws Amendment which will empower the Labour Court to enforce its judgments. The amendment also seeks to expand the scrutiny powers of the Regional Magistrates.

Already, the monetary jurisdiction of the Magistrates' Courts has been increased from \$10 000 to \$300 000 through Statutory Instrument 126 of 2019 which we believe has reduced the burden on the High Court in dealing with non-complex disputes or disputes that can be handled competently and effectively by other Courts.

We will continue to engage and ensure that measures are taken to not only ease the workload, but improve the conditions under which our judges exercise their duties.

REVIEW OF COURT FEES

The current economic environment has greatly affected the operations of the JSC. We have not been spared from the effects of the constantly changing prices on the market.

Over the past few months, the JSC has been operating on a tight budget as Treasury support has been released in a piecemeal manner. We have been forced to channel the little resources available to us towards the buying of stationary. As a result of this, some of our key operations have been negatively impacted.

In the past, the Court Retention Fund has been relied on to support operational units but the Court fees structure which has been in place had given in to inflationary pressure.

The JSC undertook consultations with stakeholders and recommended the upward review of the court fees. We are pleased to advise that the amended fees were gazetted on the 9th of September 2019.

We hope that the upward review of the fees will be sufficient for the Court retention fund to keep the operational units of the Commission and the Courts running whilst we continue to engage with Treasury for the timeous disbursement of allocated funds.

PERFORMANCE APPRAISAL

The issue of performance evaluation for Judges has been a subject of great debate and disquiet over the last couple of Symposia. However, it is integral to the assessment of the overall performance of the judiciary and a yardstick by which we can gauge ourselves and account to the public.

We must be able to assess our work, introspect and aim for improvement. Qualitative and quantitative performance is essential. A

balance must be struck between the two for the efficient and effective delivery of justice and the development of our jurisprudence.

Whilst I am aware of the discomfort the topic causes for some, it is an issue we need to engage until we find each other by coming up with a framework that we can all embrace.

The JSC has constituted a Performance and Training Committee led by the Honourable Deputy Chief Justice to come up with a system which we can all use to efficiently and accurately measure the performance of Judges.

To open this discussion, the Honourable Deputy Chief Justice will make a presentation on developing a Zimbabwe Judicial Performance Appraisal Model. I encourage all Judges to fully participate and engage in this discussion so that the Committee can come up with a Judge owned methodology of measuring performance.

As I conclude, Honourable Judges and distinguished delegates, allow me to congratulate Honourable Judges of Appeal Justice Hungwe and Justice Mathonsi on their appointment to the Supreme Court bench with effect from 2 July 2019. To these distinguished judges I say welcome,

may you continue to exhibit your commendable hard work and judicial prowess.

I would also like to congratulate the Honourable Judges, Justice Chinamora, Justice Dube-Banda, Justice Kabasa, Justice Musithu and Justice Zisengwe on their appointment to the High Court bench on 4 September 2019. I wish you illustrious and fulfilling judicial careers.

Having said this, I express my profound gratitude to the International Commission of Jurists and the European Union without whose support we would not have been able to host this Symposium. We are grateful for the continued support in achieving our common purpose of ensuring access to justice for all citizens of Zimbabwe.

I also express my gratitude to Professor Madhuku, Mr Maguchu and Mr Mucheche for continued support to the JSC's training initiatives and in taking time to attend this symposium and deliver presentations that I am sure will be useful and insightful for all of us.

To all internal resource persons whose participation has made this Symposium possible, I thank you, your contributions are appreciated.

To all Honourable Judges, I encourage you to also take this opportunity to engage, reflect and refresh. Constant and open engagement and

development through training and discussions is the only way we can identify issues affecting us as a judiciary and set out clear plans for the future of the judiciary.

It is my hope that we will all leave this symposium enlightened, refreshed and ready for the final term of 2019.

Allow me to apologise in advance as I will have to leave before the end of the programme due to other

commitments that I have to attend to. All the same, I wish you all fruitful deliberations.

With these few remarks, I declare the 2019 end of second term Symposium officially open.