



REPUBLIC OF ZAMBIA

SPEECH BY THE

PRESIDENT OF THE REPUBLIC OF ZAMBIA

HIS EXCELLENCY DR. EDGAR C. LUNGU

ON THE OCCASION OF THE OFFICIAL OPENING

OF THE

2019 JUDICIAL CONFERENCE

HELD AT AVANI VICTORIA FALLS RESORT, LIVINGSTONE

17TH TO 19TH DECEMBER, 2019

[SALUTATIONS]

The Chief Justice

Retired Chief Justices present

The Deputy Chief Justice

Retired Deputy Chief Justice

The President of the Constitutional Court

Judges of the Supreme Court and of the Constitutional Court

Judges of the Court of Appeal and of the High Court present

The Chief Administrator of the Judiciary

The Chief Registrar and All Registrars present

All Deputy Directors present

Their Worships present

Distinguished Resource Persons, both foreign and local

Ladies and Gentlemen

It is an honour and it gives me great pleasure to be associated with the 2019 Judicial Conference whose theme is **“Enhancing Capacities for Improved Access to Justice”**

Although the conference is meant to be an annual event in the judicial calendar, I am informed that this has not been possible due to the tough economic times that the country is currently undergoing. To address the financial challenges, we have had to embark on austerity measures which, I must state, have not spared any government entity, including the Judiciary. I understand the last judicial conference was held in 2016 and was graced by the Honourable Minister of Justice on my behalf.

“Enhancing Capacities for Improved Access to Justice”. This theme is befitting as it not only demonstrates the resolve, on your part, to continue to strengthen the judicial system and the desire to live up to the changing dictates of our time, but also, it resonates with our collective aspiration as a Nation to ensure that justice is more accessible and affordable. Judges and fellow members of the legal profession, the importance of realizing access to justice in our country cannot be overemphasized.

Access to justice in a narrow sense refers to the formal ability of a litigant to be heard before a court of law. In a broader context it refers to the processes of a legal system which are meant to enable every person irrespective of their class in society to invoke legal processes for purposes of redress. In any justice system this takes many forms such as: Access to constitutional justice, realization of fundamental rights and freedom, criminal justice, juvenile justice, justice in the commercial space or work place and justice in the family life.

The conference comes at a time when the demands for justice are on the increase while the institutional capabilities continue to be overstretched. It is, therefore, befitting that a conference such as this one interrogates how best to enhance institutional capacities so as to improve access to justice.

I wish to underscore that my government remains firmly committed to attaining the goals set in the 7th National Development Plan 2017 – 2021. Our aim is to accelerate all development efforts towards the 2030 Vision “without leaving anyone behind”. Chief among the priorities of the 7th National Development Plan is to improve the Rule of Law, Human Rights and Constitutionalism. This is in line with the United Nations Sustainable

Development Goals (SDGs). The objective of SDG 16 is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. To this end, the Government is enhancing access to justice by focusing on strengthening capacities of institutions in the legal and justice sector.

Allow me to highlight a few areas of interest to my Government.

1. Constitutional Justice

My government in 2016 caused to be passed by Parliament, The Constitution of Zambia (Amendment) Act No.2 of 2016. This Act ushered in two new courts; the Constitutional Court and the Court of Appeal. The Constitutional Court was established for the first time in our history and has the sole mandate of dispensing Constitutional Justice in Zambia save for the Bill of Rights which remains under the jurisdiction of the High Court due to the failure of the referendum. The Constitutional Court has been able to adjudicate on a number of matters, and particularly in the political space be it Local Government, Parliamentary or even Presidential Levels.

2. Creation of Specialized Divisions

The creation of Specialised Divisions within the High Court such as the Industrial Relations Division, Commercial Division, and the Family and Children's Division will help enhance access to justice in these specialized areas of the law.

Making the Industrial Relations Division and the Commercial Division more accessible helps our country in so far as being an investment destination of choice. In this regard, My government stands ready to work with the Judiciary in creating a legal architecture and environment that will enhance the Judiciary's capabilities and in this respect ensure that this organ of State is adequately resourced to carry out its Constitutional mandate with minimal disruptions if at all.

My Lady the Honourable Chief Justice you will agree with me that it is apparent that certain negative trends in society have been gaining traction negating efforts My government is making in other economic and social sectors.

Notable among these vices are Gender-Based Violence, Child Abuse and negligent substance abuse to name but a few. These challenges call for the strengthening of institutional linkages among all sector players in the justice system if access to justice is to be realised in this regard. With respect to gender-based violence in particular, there has been an upward trend in the number of cases over the years as shown during the commemoration of the “16 days of activism against gender-based violence” which ended on 10th December, 2019. However, comfort can be drawn from the fact that more people are taking positive action against incidences of violence by reporting the cases and allowing the courts to adjudicate on them. This is also evidence of the confidence that communities have placed in the purpose-built GBV fast track courts that are operating in six (6) provinces.

My government is further committed to ensuring the full operationalization of the Anti-Gender Based Violence Act by appropriating more money for purposes of establishing and operating shelters for victims; and ensuring that each province has an adequate number of operational shelters and fast track courts.

In this regard I wish to direct the Minister of Justice alongside other relevant line ministries to work with the Judiciary in enhancing the already existing institutional linkages to curb these vices by ensuring that justice is dispensed timeously and offenders made to account for their misdeeds.

3. Alternative Dispute Resolution

My Lady, the Honourable Chief Justice, it has been proved that one way of making justice more accessible is to, alongside traditional dispute resolution mechanisms, explore alternative dispute resolution mechanisms. In this regard I am happy to note the strides the Judiciary is making through mechanisms such as court annexed mediation which I am aware, through a number of publicized settlement weeks, has seen a number of litigants access justice without going through the litigation process. This I must state enhances our investment climate and promotes the amicable settlement of disputes. I am reliably informed that mediation will be among those topics to

be considered during this conference. What is more gratifying is that this mode of dispute resolution is not only being restricted to the Superior Courts but has been extended to the Subordinate Courts.

Undoubtedly, the backlog of pending cases and Judgments is a cause for concern and one that is haunting many Judiciaries across the globe. However, it is a fundamental right that accused persons and litigants must have their day in court and know their fate or outcome of their cases. It is, therefore, imperative that cases are heard and determined within a reasonable time and matters are concluded with well-reasoned Judgments. It is pleasing to learn that the Judiciary has taken great strides to reduce the backlog of cases and speed up the delivery of judgments in keeping with its Constitutional mandate.

I am reliably informed that a taskforce on backlog has been put in place. It is commendable that the taskforce has so far dismantled **3,619** civil cases out of **4,574** cases that were in backlog in the High Court at Lusaka, Kitwe, Ndola and Livingstone.

4. Criminal Justice

Yet another challenge that our criminal justice system is plagued with is overcrowded correctional facilities. This has terribly weakened the capacity of correctional facilities to adequately cater for the needs of the inmates in health care, food, accommodation and to provide rehabilitation, education, training as well as recreation programmes. Overcrowded facilities also hamper the capabilities of correctional authorities to effectively manage correctional facilities to meet the re-integration needs of inmates and to ensure that their human rights are upheld.

While government is endeavouring to build more correctional facilities and to make use of the parole system so as to remedy the situation, the use of alternative sentences as opposed to custodial sentences would go a long way in achieving the decongestion. I implore the bench to wholly embrace alternative sanctions to incarceration such as community service, restitution and suspended sentences, in deserving cases. Such sanctions will not only reduce the numbers in the correctional facilities but will also spare government's already stretched resources. It will also result in a more balanced manner of dealing with offenders with fewer negative implications

and markedly reduce the burden of the criminal justice system. Our criminal justice has to move towards restorative justice rather than retributive justice.

5. Case Management System

It gives me great pleasure to learn that the Judiciary is currently in the process of developing an automated case management system in collaboration with the National Centre for State Courts (NCSC) of the United States of America. The pilot project is set to commence in the High Court General List at Lusaka before the project is rolled out to other Courts.

The software is expected to, among others, facilitate e-filing, e-payments and automated allocation of cases. Once operational, the system will bring the services of the Judiciary at the doorsteps of the people. This case management system will be reinforced by the implementation of the proposed amendments to the High Court Rules that are in the process of being finalised.

6. Court Infrastructure

My Lady the Honourable Chief Justice allow me to say a few words about the state of the Judiciary in the context of both soft and hard infrastructure from an executive perspective. Let me begin by stating that while some measure of investments has been made, it is acknowledged by My government that these have not been adequate. I am aware that purpose-built chambers are inadequate for both Superior and Subordinate Courts. This I am informed has led to a situation where judges in some Superior Courts operate in different court houses and are separated from their peers. I wish to direct the Attorney General to follow up on this matter with the relevant line ministry working with the Judiciary and report back to me in the shortest possible time.

I am also aware that six (6) provinces do not have any High Court buildings and as a result, the High Court only sits as a circuit court. This has negative implications of contributing to delayed delivery of justice, backlog of cases and increased prison population due to extended periods of awaiting sentences in criminal matters.

In our endeavour to resolve this challenge, my government is prepared to work hard in ensuring that the Judiciary is recognized in our decentralization strategies by improving building conditions and facilities in every province. I

am confident that this will greatly aid in decongesting the courts to fulfil the constitutional mandate of speedy delivery of justice. We have also taken deliberate steps to construct additional court infrastructure countrywide. Funds permitting, we intend to establish High Courts in the remaining 6 provinces of Zambia.

In the area of soft infrastructure, I consider the establishment of a Judicial College as fundamental if the Judiciary is to systematically enhance its skill sets through its ranks.

My Lady the Honourable Chief Justice, you will agree with me that the pace at which new areas of law practice are emerging demands that the Judiciary remains relevant to all stakeholders. I would urge this conference and your training committee to constantly update skills sets in the emerging arms of practice and in this respect may I state that you seriously consider ICT platforms available in the area of online learning to keep the adjudicators abreast with any greenfield that may emerge. I urge the Judiciary to have a long-range view of where the world is headed as this will inform the sort of matters you must expect down the line.

My government will support the efforts by the Judiciary in establishing a Judicial College. I believe that in the short term this may not require a lot of financial outlays as it could partially ride on your already existing platforms.

7. Judicial Independence

Honourable Chief Justice and distinguished participants, I am alive to the fact that for the Judiciary to effectively carry out its mandate as a co-equal arm of Government there is need to uphold the rule of law and the independence of the Judiciary.

The Constitution of Zambia, as amended by Act No. 2 of 2016, gives effect to the independence of the Judiciary in Article 122. The provision, among others, states and I quote:

122 (1) In the exercise of judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority

(2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer

(3) The judiciary shall not in the performance of its administrative functions and management of its financial affairs, be subject to the control of or direction of a person or an authority

(4) A person and a person holding a public office shall protect the independence, dignity and effectiveness of the Judiciary.

The Constitution, therefore, enjoins the Courts to remain impartial and independent of all external pressures or improper influence.

On the other hand, while judicial authority vests in the Court, this authority is derived from the people of Zambia. Article 118 of the Constitution is very instructive. It states that in exercising judicial authority, the Judiciary must act in a just and fair manner, and in a way that promotes accountability. It is the impartiality and institutional independence that creates public confidence in the Judiciary. A Nation's confidence in its judiciary is an essential ingredient for realizing the judicial function in providing access to justice. The Courts under the banner of the Judiciary have a unique position in our democratic and constitutional dispensation, as the bulwark of justice and democracy.

It is this confidence in the judicial system that causes the public to respect and accept court orders and their legality even in circumstances where the public does not agree with the decisions of the courts. In the same manner that confidence in our judges and the judicial system would be compromised if our courts and judges are not independent or not seen to be impartial and independent. The nation's confidence in the judicial system would similarly be undermined by a judicial system that is inaccessible and inefficient. Thus, to claim, uphold and maintain the confidence that the judiciary has earned it is imperative that courts become accessible and function in an effective and user-friendly fashion.

Therefore, as we deliberate and reflect on the justice system of our country and its challenges, we should endeavour to inquire and determine what part should and can Judges proactively play in ensuring that access to justice is assessable to all Zambians. We owe the Zambian People a justice system

that is accessible and impartial to all litigants irrespective of their standing in society; a system that is efficient and delivers results within a reasonable time; a system that is user friendly and ensures that its users understand it; and importantly a justice system that responds to the needs of its litigants and is efficient and effective. To have a justice system that is effective, it must be sufficiently resourced.

As President of the Republic of Zambia and as a member of the legal profession, I am aware that access to justice does not exist in isolation. It is therefore necessary that in discussing access to justice we must do so in a broader context that incorporates good governance, respect for the rule of law, democratic values and respect for human rights.¹The salient question which arises is what are the key principles that are crucial to our justice system to ensure that it is accessible and efficient? It is my sincere hope that this conference will provide or at least attempt to provide an answer to this question.

In conclusion, I wish to emphasise that enhancing access to justice is an urgent need in our justice system. This conference can assist us to layout out a blueprint to achieving the best possible justice system in which access to justice is a reality. On behalf of the Zambian people I would like to thank you for the crucial role you play in our society in being a bulwark of democracy and justice and for your commitment to improving access to justice which is testament to your presence at this conference.

Thank you.

¹J Shezongo Macmillan "Zambia, Justice Sector and the Rule of law" Open initiative for Southern Africa (2013)