



CASE FLOW AND CASE MANAGEMENT

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**AT THE INDUCTION PROGRAMME FOR NEWLY APPOINTED JUDGES OF
THE COURT OF APPEAL Protea Lodge Chisamaba 10th October 2016**

Introduction



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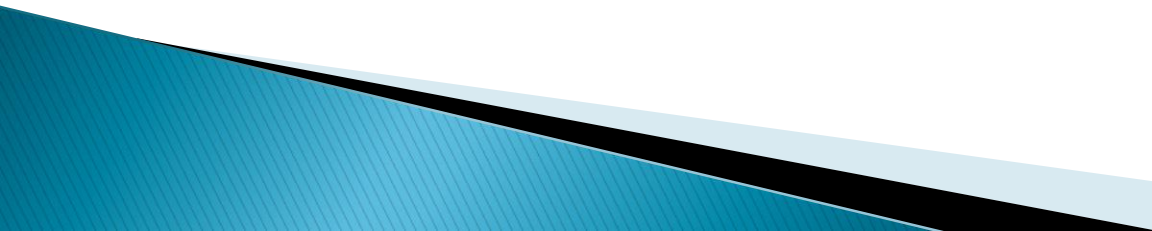
Introduction



Introduction-Backlog



Introduction

- ▶ The presentation is not a lecture
 - ▶ Aimed at exchanging ideas on the subject
 - ▶ I am not an expert on case flow and case management
 - ▶ My presentation is, therefore, based on my experiences as Practitioner , High Court Judge and now Judge of the Supreme Court
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Court's Perspective Rationale

➤ Why should there be proper case management and case flow

➤ **Constitutional Provisions**

Act No. 2 of 2016

- Authority to adjudicate derived from the people of Zambia to be exercised in a just manner with accountability: Article 118 (i) .
- Justice for all, without discrimination: article 118(2) (b).
- Justice shall not be delayed: Article 118 (2) (a).

Rationale Cont....

▶ **Rules of Court**

- Matters are judge driven.
- Judge must have control of the proceedings.

(See cases of: Winnie Zaloumis (suing in her capacity as the secretary for the Movement for Multiparty Democracy) vs Felix Mutati and others selected judgment no. 28 of 2016)

Practitioner's perspective

▶ **Legal Practitioners Act, Cap 30 Section 52**

- Bars practitioners from misleading the Court

Rationale Cont....

- ▶ **Legal Practitioner's (Practice) Rules SI No. 51 of 2002**
 - . Conduct prejudicial to the administration of justice
 - . Duty to ensure the proper and efficient administration of justice

Definition of Case Flow and Case Management

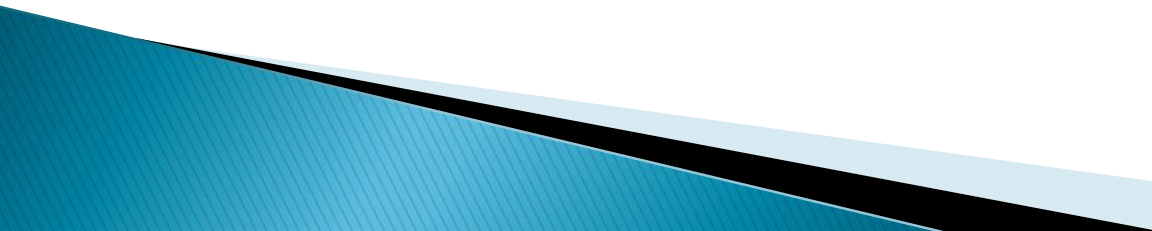
- ▶ Chief Justice's definition, in her paper presented at the induction workshop for Constitutional Court judges in may 2016 *“Case management is synonymous with case flow management... case flow management entails the control and monitoring by the court of the movement of cases from filing up to disposal whether by judgment or otherwise”*

Four levels of case flow management -

1. At the stage of filing the record

- Opening of the record
- Scanning of the record
- Forwarding of the record to the Judge President for allocation

Definition Of Case Flow and Case Management Cont.....

- 2. Receipt of the record by the Judge President and allocation to the dealing Judge**
 - 3. Receipt of the record by the dealing judge and attending to it**
 - 4. Role of Counsel**
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Definition Of Case Flow and Case Management Cont.....

- ▶ There is need for an orderly management of a case record at all the four levels

Causes of Failure In Case Flow and Case Management

1. At the stage of filing the record - Registry Perspective

- Poor Supervision
- Delay in opening of case records
- Delay in Scanning case records
- Delay in the transmission of case records to the Judge President

Causes of Failure In Case Flow and Case Management Cont....

2. Receipt of the Record by the Judge President - Judge President's Perspective

- Delay in allocation of matters – distinguish chamber matters from appeals – adopt procedure in the Supreme Court
- Inherited matters

Causes of Failure In Case Flow and Case Management Cont....

3. Receipt of record by the dealing judge - Judge's Perspective

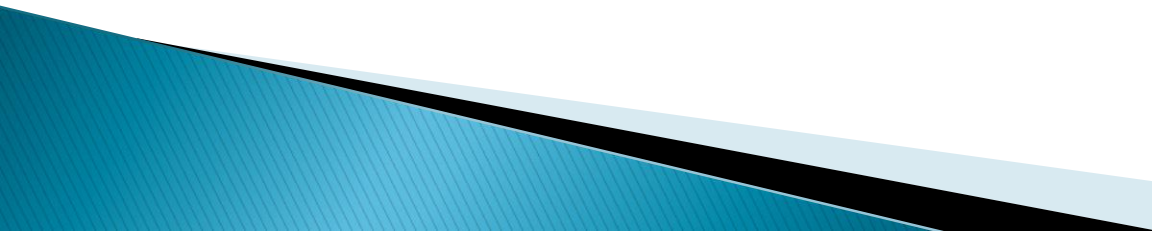
- **Diary Management**

- ✓ Failure to notify counsel when court is not able to sit and immediate allocation of fresh hearing dates.
- ✓ Allowing unnecessary Adjournments
- ✓ Failure to adhere to one's diary in terms of time allocated to cases
- ✓ Failure to deliver judgments and rulings on time
- ✓ Ineffective prehearing discussions

Causes of Failure In Case Flow & Case Management Cont....

- **Case Management skills**
 - ✓ Failure to properly prioritize cases i.e. appeals from commercial list, criminal appeals and appeals from interlocutory orders
 - ✓ Failure to properly prioritize time i.e. chamber matters to be heard in 15 minute time slots; between 08:15 and 09:00 and 14:00 to 14:30; rulings to be delivered immediately if possible; appeals to be heard thereafter; segregating time for sitting and writing judgments
 - ✓ Failure to control the parties and take charge of ones court room / motions at hearing and filing of heads of argument out of time

Causes Of Failure Case Flow & Case Management Cont....

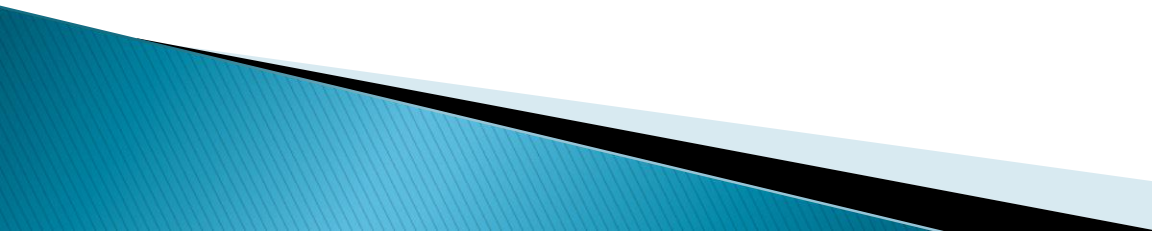
- ✓ Failure to properly segregate cases to ensure that the new appeals do not fall into backlog like old appeals
 - ✓ Failure to utilize tools available for case management such, real time court reporting and research advocates.
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Causes of Failure For Case Flow And Case Management Cont....

4. Role of counsel - Legal practitioners' perspective

- Failure to prepare adequately for cases
- ✓ Request for unnecessary adjournments
- ✓ Reporting to court late
- ✓ Frivolous and unnecessary applications
- ✓ Failure to comply with court rules

Causes of Failure For Case Flow and Case Management Cont....

- Failure to perform their duties as officers of the court
 - ✓ Little or no research in the matter before court
 - ✓ Lack of courtesy and professional etiquette
 - Poor professional training
 - Failure to perform their duties to their clients
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Solutions

1. Registry Perspective

- To ensure registry staff recruited for the registry have the appropriate training and experience in an appellate court
- To ensure that registry staff are properly monitored and supervised
- ✓ Prompt opening of records
- ✓ Prompt scanning of records
- ✓ Prompt referral of records to Judge President

Solutions

2. Judges' perspective

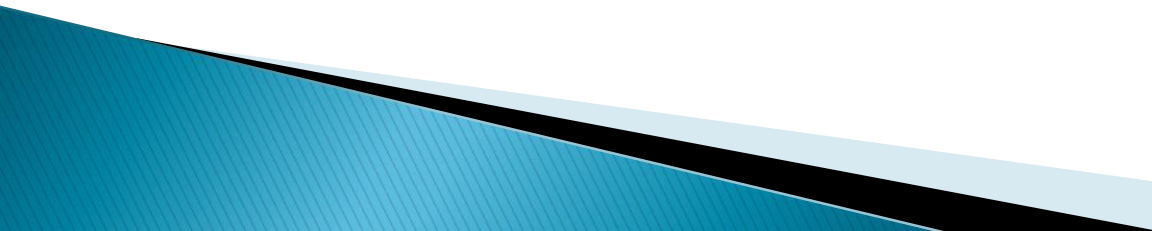
- **Diary management**
 - ✓ parties to be notified well in advance if the court is unable to sit- alternative hearing dates to be given immediately
 - ✓ Ensure parties strictly adhere to rules of court, in terms of preparation of the record of appeal, filing of the record of appeal and filing of heads of arguments and motions (see case of Access Bank (Z) Ltd vs Group Five/ZCON Business Park Joint Venture (suing as a firm) SCZ/8/52/2014
 - ✓ Adjournments to be allowed sparingly and for good cause- resort to be had to penalty of costs
 - ✓ Deal firmly with frivolous applications
 - ✓ Strict adherence to times allocated for sittings – parties should not be made to wait

Solutions


Judges' perspective

- Case management skills
 - ✓ segregation and prioritizing of cases – appeals from commercial list, criminal appeals and appeals against interlocutory orders
 - ✓ Prioritization of time
 - Chamber sittings
 - Main hearings
 - Judgments and rulings/ when are they to be written

Solutions

- ✓ Judicial capacity
 - Guide and control parties
 - Take charge of courtroom / motions and filing of heads of arguments late
 - ✓ Segregation of cases
 - Old allocation from new ones
 - The ones in backlog not to delay the new ones
 - ✓ Proper utilization of tools to reduce backlog
 - Real time court reporting
 - Research advocates: Summarize: undisputed facts; evidence in the court below; summarize the heads of arguments; research on the law for the issues
 - Judge to: retain decision making process and identification of issues.
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Solutions

- Thoroughly study case record
 - Identify issues in contention
 - Identify issues in agreement
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Solutions

3. Judge President's perspective

- To ensure registry is properly managed
- To allocate records promptly
- Ensure effective participation in prehearing discussions and thorough perusal of records of appeal by all prior to discussions.
- ✓ Court to have a common position except where there is decent
- ✓ Precedent must be adhered to
- ✓ Compliment the opinion reached by CAV judge
- ✓ Assist CAV judge reach an informed decision on the matter

THANK YOU !!!

