INTRODUCTION

I was invited to present a paper at this Induction Programme on a topic entitled:

Team Work, Judicial Etiquette and Relations with Support Staff and Members of the Public.

Although the topic sounds simplistic, I must confess that I found it to be a mouthful and challenging. Above all, I also found it to be novel. It is a mouthful because it is a long and complicated topic encompassing a wide range of subjects. It is challenging and novel because **teamwork, judicial etiquette,** and let alone **relations with support staff and members of the public** are not topics frequently discussed at various conferences of Judges. Frequently discussed topics at workshops for Judges are **Judgement Writing, Judicial Independence** and **Accountability,** and **Judicial Codes of Conduct** etc, etc.

However, on serious reflection, I realised that the topic reflects contemporary issues that affect litigants and society at large. This is so because it is not uncommon these days to hear discussions on **Professional Etiquette for Lawyers and parliamentary Etiquette for Members of Parliament.** Indeed, Judges are also governed by rules of **Judicial Etiquette,** although these rules are not codified or written.

But the public at large expects Judges to feel passion for the law. They expect Judges to feel that the law and their interpretation of it matters to the lives of the litigants and to society. Thus, Judges should not see the law or litigants as a game or a puzzle set up for their amusement.

The public further expects Judges to Judge in a disinterested manner by keeping personal biases and prejudices out of their Judging.[1] Indeed, when Judgments are misunderstood, we all know what follows. Judges are given all kinds of names and tags. In the recent Presidential Election Petition, Judges were described as **"thugs"** just because some litigants did not like or agree with the Rulings of the Court.

I have decided to split and discuss the topic into two parts, namely;

1. Teamwork, and
2. Judicial Etiquette and Relations with Support Staff and Members of the Public.

TEAM WORK

This Induction Programme is **unique** and **historical**. The Judges of the Court of Appeal will make history, as the Court is a stand-alone Court between the High Court and the Supreme Court. This is happening for the first time in the history of the Zambian Judicature.

[1] David Mcgowan: Judicial Writing and the Ethics of Judicial Office, The Eleventh Annual African Workshop for Chief Justices and Senior Judiciary, School of Law, Trinity College, Dublin.

The background to the establishment of the Court of Appeal is that on 5th January, 2016, two Constitutional Bills received Presidential assent, thereby ushering in an Amended Constitution which, **interalia,** established, for the first time, a stand-alone Court of Appeal under **Article 130** thereof.

Article 131(1) of the Constitution, in relation to the jurisdiction of the Court, provides as follows:-

> ***"131 (1) The Court of Appeal has jurisdiction to hear appeals from;***
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> ***a) the High Court;***
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> ***b) other Courts, except for matters under the exclusive jurisdiction of the Constitutional Court; and***
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> ***c) quasi – judicial bodies, except a local government elections tribunal."***

In **Article 131 (2)**, it is provided that an appeal from a decision of the Court of Appeal **shall** be made to the Supreme Court with **leave** of the Court of Appeal.

The effect of these provisions as I see them is that the Supreme Court will have very little work in the long run, if not becoming completely redundant.

I contend that the Court of Appeal, in its present structure and jurisdiction, has taken over what was previously all the jurisdiction of the Supreme Court. I can, therefore, forsee a time

in the future where the Supreme Court Judges will have very little or no work to do.

The work of the Supreme Court Judges in the present set up will depend on the benevolence of the Court of Appeal Judges granting **leave** to a party who will have the means to take his or her case up to the Supreme Court. With hindsight, it could be said that the Supreme Court should have retained some jurisdiction in which some matters should have been allowed to go straight to that Court. As it is, the Court of Appeal will be too congested, a situation from which the Supreme Court has now run away.

To stress the point, ***Article 125 of the Constitution of Zambia (Amendment) Act, 2016,*** conferring jurisdiction on the Supreme Court provides:

> ***"125 (1) Subject to Article 128, the Supreme Court is the final Court of Appeal***
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> ***(2) The Supreme Court has:-***
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> ***a) appellate jurisdiction to hear appeals from the Court of Appeal; and***
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> ***b) jurisdiction conferred on it by other laws.***

It has already been noted that appeals from the Court of Appeal to the Supreme Court, have alimitation in that they can only be made by **leave** of the Court of Appeal. This means that a number of matters or in matters where the Court refuses **leave,** that Court becomes the final Court of Appeal. This is so because there

seems to be no provision as to what should follow when the Court of Appeal refuses to grant leave to appeal to the Supreme Court.

The **Court of Appeal Act No. 7 of 2016** that received the Presidential assent on 2nd May, 2016 provided for the jurisdiction and procedure of the Court, the hearing of Appeals from the High Court and quasi-judicial bodies. The amended Constitution, in **Article 132 (1)** provides for sittings of the Court: ***"The Court of Appeal shall be constituted by an uneven number of not less than three Judges, except when hearing an appeal in an interlocutory matter."***

Section 5 (2) of the Court of Appeal Act is to the same effect. Unlike in the High Court, where the sittings of that court are mainly by a single Judge, this will not be so in the Court of Appeal. It is at the sittings of the Court of Appeal that the issue of **Teamwork** will become relevant to the Judges of the Court.

A Japanese writer once said:-

"individually we are one drop. Together, we are an ocean."

This beautiful metaphor describes a very simple and practical idea. By working together, the Judges of the Court of Appeal will accomplish more than they could alone.

Teamwork has become an integral part of modern workplace. I had an opportunity of reading the majority judgment and the two

dissenting Judgments in the recent Presidential Election Petition. After a close examination of those judgments, I formed an impression that had there been adequate teamwork, the outcome would perhaps have been different. However, I must stress that even with teamwork, we must tolerate dissenting judgments. This should be so because minorities or dissenting decisions contribute to developing our jurisprudence of constitutional and legal interpretation. It is said that any interpretation of statutes must strive for a reasonable accommodation of external societal and internal jurisprudential values.

In the Court of Justice of the Common Market For Eastern and Southern Africa, in the Court I served for 17 years, there is a provision in the **Treaty** establishing the Court which provides:-

"The Court shall deliver one judgment only in respect of every reference to it, which shall be the Judgement of the Court reached in private by majority verdict" [2]

For reasons not necessary for the purpose of this paper, dissenting judgments are not allowed in that Court. The Court through teamwork, strives to reach a majority consensus. The sittings of that Court are like in the Court of Appeal which are of an un even number but not less than three.

Teamwork, therefore, requires collaboration. I would go further that even in matters before a single Judge, teamwork will still be

[2] Treaty Establishing The Common Marhet for Eastern and Southern Africa, Article 31 (2)

advisable. This can be done by way of consultation. Remember that when a single judge will make a mistake, the blame will be on the whole court and not on the single judge.

JUDICIAL ETIQUETTE AND RELATIONS WITH SUPPORT STAFF AND MEMBERS OF THE PUBLIC

At the Orientation Workshop for Constitutional Court Judges held from 10th to 13th May, 2016, I presented a paper based on the same topic. For the benefit of the Court of Appeal Judges, I will reproduce that paper with minor modifications. The simple dictionary definition of **etiquette** means the rules of polite or correct behaviour in a society or among members of a profession. In its French origin, it means a list of ceremonial observations of a Court.

It has been however stated that the topic of **etiquette** has occupied many writers and thinkers in all sophisticated societies for millennia, beginning with a **behaviour code,** by Ptahhotep, a vizier in ancient Egypt's Old Kingdom during the reign of the fifth Dynasty King Djedkare.

It is also now said that all known literate civilizations, including ancient Greece and Rome, developed rules for proper social conduct.

It is, thus, said that **Confucius** included rules for eating and speaking. Under the topic **Judicial etiquette**, I tease out issues for a critical thought on the quest for **judicial etiquette** and

suitable interaction and relations with support staff and members of the public.

In Zambia, like in many other countries, we have a code of conduct for judicial officers, which identifies acceptable conduct and provides a baseline. However, in the limited time I had to prepare my paper, I have not been able to lay my hands on a country with a **code of judicial etiquette.** But we all know that Lawyers have rules governing their conduct and etiquette which when breached, there are sanctions on the ground that a particular Lawyer did not conform with the accepted conduct and traditional behavior of Lawyers, who are gentlemen.

The debate could be whether we should, in Zambia, have a code of **judicial_etiquette.** The argument in favour of having a code of **Judicial Etiquette_** could be that etiquette is essential for making a good impression and that this is true especially in the courtroom where there are many stated and unstated rules of conduct for the judges, litigants, lawyers and other attendees.

The argument goes further that a Judge, not only represents the ultimate authority in the courtroom, but also represents the Law as well. This is why when a person addresses the court, the judge is the main focal point. Hence, before a Judge enters a Courtroom, there is a knock on the door followed by words such as **"Court rise" or 'silence in court'."** And when a Judge enters into a Courtroom, everybody stands up; nobody sits down until the Judge has taken his or her sit. Indeed, some of the

basic courtroom rules demand of lawyers and other concerned with Court business, even judges, to strictly observe time, to be polite to the Judge, to opposing counsel, to court staff and to dress appropriately. Other etiquette of courtroom rules include counsel asking permission to approach a witness and remaining courteous when disagreeing with the judge's ruling on an objection.

It is acknowledged that the Judge and other courtroom formalities can be intimidating. On the other hand, courtroom proceedings are serious business that offer the opportunity for justice to be conducted fairly. Hence, the importance of **judicial etiquette.**

Members of staff and of the public expect of a judge to be a person knowledgeable in the law and a person of steady disposition to Judge only in accordance with the law. A story, which has gone viral, is told that a newly appointed judge, while handling a chamber matter, loudly consulted his marshal on the procedure to be followed in a matter. This was done in the hearing of the parties. What the parties thought of the judge afterwards, is anyone's guess.

Dignity and decorum are essential **judicial etiquette** to a judge both in and out of Court. In Court, proceedings should be conducted with fitting dignity and decorum. The judge should avoid going into heated argument with counsel, let alone quarrel with him, as that lowers the prestige and dignity of the Bench.

Lord Hewart once observed:

> ***"The business of a judge is to hold his tongue until the last possible moment and to try to be as wise as he is paid to look"***

Also Sir James Fitzjames Stephens in his book, **History of the Criminal Law;** observed:

> ***"The duty most appropriate to the office and character of the Judge is that of attentive listener to all that is to be said on both sides and not of an investigator; after performing the duty, patiently and fully, he is in a position to give the jury a full benefit of his thoughts on the subject."***

It is said that a judge, who gets unduly involved in the proceedings before him, is like an umpire who enters the arena and becomes a contestant. His vision must, in the end, be clouded by dust of the contest. Thus, it is not dignified for a judge to become a participant for then, he cannot, and may be, will not, be holding the scales of justice quite evenly as he should. It also detracts from the dignity of the bench if a judge asks too many questions. These are clearly some of the uncodified rules of **judicial etiquette.** It helps to insulate a judge from highly embarrassing contacts with actual or prospective litigants. A judge should know where to go and where not to go without loss of self-respect and judicial dignity. "**Be honourable and dignified,"** is an essential commandment for a judge.

By now, I think you all know or have experienced that life as a Judge demands monastic existence. I am sure that by virtue of your appointments to the Bench, you have had to give up some of your best friends and are also avoiding some rendezvous which you used to frequent. This is again part of unwritten judicial etiquette. It helps to insulate a judge from highly embarrassing contacts with actual or prospective potential litigants. A Judge should, therefore, be selective of places to visit and socialize, without endangering self-respect and judicial dignity.

It is acknowledged that the transition to the Bench as a Judge from the Bar or from other private life is a big one, and making the change with balance and equilibrium is not always an easy task. Being a judge on the other hand can easily get into someone's head because a judge possesses tremendous and far reaching powers. The ability to wield this awesome power with humility and consideration makes the mighty difference between maturity and immaturity; between a good Judge; and a power drunk tyrant dressed in robes.

For a judge of the Court of Appeal, it will not be good **judicial etiquette** to assume or to claim to have been appointed to this historical Court solely because of outstanding ability or performance or that you were reluctantly persuaded to give up a lucrative practice or job, and was, as it were, dragged up to the Bench.

The road to success on the Bench is the same as in any other field of human endeavour. That road is not a bed of roses. Rather, it is the narrow path, thorny, difficult and lonely. It must be conquered by relentless exertion, continuous assiduity and hardwork. Some people, including many members from the Bar, wrongly and mistakenly think that judgeship is a **sinecure**, a form of retirement for a hardworking practitioner. To such people, **"a judge is only a lawyer who is invited to sit and rest on the bench when he has had alot of standing at the Bar."** That is very far from being the case. [3]

The truth, as all of you members of the new Court of Appeal will soon discover to your disillusionment, and may be, to your utter discomfiture, is that you will have to learn to be a good judge of the Court of Appeal despite having been on the High Court Bench for some years. In the Court of Appeal, things and work culture will be different. It will have to be **teamwork** and not loner-work. Unfortunately or fortunately for the new Court of Appeal, the decisions of the Court will only be appealable to the Supreme Court with **leave** of that Court. This means that in most instances the decisions of the Court will be final.

The public will demand more from the Court of Appeal because it will have greater visibility due to the nature of the jurisdiction conferred on it. In short, the Court of Appeal; will handle almost all the work previously the preserve of the Supreme Court.

[3] Justice Chukwudifu Oputa, Justice of the Supreme Court (Rtd), Judicial Ethics and Cauous of Judicial Conduct; The Eleventh Annual African Workshop for Chief Justice a Senior Judiciary School of Law, Trinity College, Dublin.

As a consequence of the coming of the Court of Appeal on the scene, most members of the public will interact more with the Court of Appeal than with the Supreme Court or the Constitutional Court.

In the present justice system, most members of the public obtain information about Courts and their operations from sources such as the print and electronic news media, word of mouth and entertainment, such as movies and television rather than their own direct experiences or observation. However, much of the information given to the public from these sources is often inaccurate or negative, creating the view that judges are out of touch with the public. They often portray the Judiciary as **"a closed self – reproducing entity embedded"** in archaic traditions, resistant to change and disconnected from ordinary citizens.[4]

Unfortunately, debunking this impression is not helped by the antique costume we have continually clung to in most Commonwealth jurisdictions. Added to this is the impenetrable language we use, and the rituals we observe.[5] It is not assisted by the aloofness we have traditionally affected in the public.

It is now being contended that in an age of talkback and instant accessibility of public figures, judicial detachment needs to be explained and some modification needs to be considered. Thus,

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[4] The Rt Honourable Dame Sian Elias Chief Justice of New Zealand, Contemporary issues for Courts demystifying the Judicial Process, Address to the 15th Conference of Chief Justice of Asia and the Pacific Lawasia, held at Supreme Court, Singapore, Tuesday, 29th October, 2013

[5] Ibid note 4

judicial disengagement and the lack of contact most members of the community have with Courts is undermining public confidence in the judiciary.

For the Court of Appeal, being a new structure in our justice system, it will need to undertake some demystification to dismantle any misunderstanding of its role in our judicial system. Initially, the public will not appreciate the difference between the Court of Appeal and the Supreme Court or even the Constitutional Court.

The opportunity to demystify the Court through laying open its work has never been greater than now because of modern communication. In my view, this would be the best strategy for the Court to adopt. The demystification of the Court of Appeal and the judiciary as a whole, will to a large extent depend on how effectively the traditional and current technological advancement will be put to use.

The common and popular methods of communication nowadays include the use of traditional news media, the possibility of televising court proceedings, the accessibility to judicial decisions, communication with the public through websites, social media, Court visits and possible interviews with the judges.

At this juncture, allow me to briefly examine some of these methods of demystification.

THE TRADITIONAL NEWS MEDIA[6]

For a long time, most courts in many jurisdictions have used the traditional news media as means of communicating with the public about their operations. But very often the traditional news media do not demystify the Courts. The days when the dailies had experienced news reporters who understood the works of the courts and covered it accurately are gone. The reporters who attend and report on high profile court cases these days very often have no background in court work and court language. Inaccurate, inflammatory, or over dramatized reports are also not uncommon.

In some high criminal trials, media reporting has treated proceedings as public entertainment. Perhaps, with the enlarged structure of the judiciary, there may be need for the judiciary to engage the media on issues of how courts operate and the language of the courts.

TELEVISING COURT PROCEEDINGS

Some countries, such as the United States of America, New Zealand and here close at home, South Africa, have permitted filming and televising in Courts, but with certain guidelines setting out conditions. For those who watched the **ENCA** channel on South Africa Broadcasting Television Network during the Nkandla upgrade case will have noticed that the delivery of the

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[6] Ibid note 4

judgement by the Constitutional Court was all live on television. It looked very impressive. All those who watched the television heard the judgment for themselves as against reading an edited version which would have been distorted and exaggerated.

Whether the Zambian Court of Appeal or the Judiciary as a whole would be inclined to go that way, would be a matter of policy considerations and of course a serious departure from the tradition. On my part, I am not whole in favour of televising the entire court proceedings, but I see no harm in televising the delivery of judgement, especially in high profile cases. However, the presence of cameras in the courtroom can prove quite disruptive at times. I do not see a consensus on the issue of allowing television in the courts for a long time to come.

ACCESS TO JUDICIAL DECISIONS[7]

In most jurisdictions, modern technology allows judicial decisions to be accessed upon delivery from court's website. The biggest problem, however, in these days of mass communication of judicial decisions, is not disseminating them, but understanding them. This means that when writing judgements, the general audience must be taken into account even if the subject matter of the judgement is technical. Thus, if we have to use the opportunity provided by modern communication to communicate court proceedings and judgments, we must pay closer attention to expressions we use. It is said that some of the senior courts of

[7] Ibid note 4

the world engage editors to help in making judgements more accessible. This sounds attractive.

COMMUNICATION WITH THE PUBLIC – WEBSITES[8]

The development of internet has been an important factor for judiciaries in establishing an easily accessible new public face. Before I went on retirement, the judiciary had established a website. I do not know how advanced it is now and how updated it is. But since the new Court of appeal will have a greater impact on the public than the Supreme Court and the Constitutional Court, it may be advisable that the Court establishes its own website.

Indeed, the creation of a court website is part of any courts' strategic communication, the primary audience of judicial website being the broader public and those **"consumers"** who use the judicial system on a regular basis, such as lawyers and litigants. Also, for the general public, judicial websites provide an easy point of access to information about the role of the judiciary and the judges who operate within it. A judicial website enables a large amount of information to be conveyed easily to various targeted groups within the broader public.

The challenge in using the opportunity provided by this form of communication technology is how to treat it seriously and to put it into the resources needed to make it truly useful.

[8] Ibid note 4

SOCIAL MEDIA[9]

It has been observed that in the meantime, the wave of social media is passing many Courts by. But that the sense of anonymity of this medium means that it is conducted, not only at a fast and furious pace; but often with casual carelessness about language and information. Thus, it is not surprising that the sensational dominates and the context is almost non-existent, hence, many using this medium, do not find it necessary to make any inquiry before launching into sweeping condemnations and opinions.

But despite these formidable challenges, commentators see that social media and other news media provide an opportunity for the public to be informed about the role of the courts **"unmediated by journalists and editors."** Most importantly, it is a way of reaching the young.

Chief Justice Warren regards technology and social media as providing an **"exhilarating opportunity for the Courts to tell the public we serve who we are, what we do, how we do it and why the rule of law matters."** I have very serious reservations on the use of social media as a means of communicating the operations of the Court, but the debate must still be kept alive for the future.

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[9] Ibid note 4

COURT VISITS[10]

Encouraging court visits by the public has proved to be a successful mode in some jurisdictions in spreading information about the operations of the court. Here at home, our own Parliament seems to be doing very well in encouraging visits to Parliament. Above all, they operate their own community Radio. The Court of Appeal, when fully established, may wish to emulate our Parliament in encouraging visits by the public.

INTERVIEWS WITH JUDGES[11]

It is said that in an age when the public has come to expect immediate access to public figures, judges cannot expect to keep aloof. It is said that in a number of countries, Chief Justices and other judges regularly tweet, are on facebook and give interviews or write opinion pieces. And in several jurisdictions, judges have participated in television programmes about their work. In some cases, Chief Justices or other judges have been interviewed on particular issues relating to operations of courts.

It now seems accepted that when there is a particular issue which could affect public confidence in the judiciary, some appropriate response may be essential at sometime. Also speaking on a matter on which the Judges have particular expertise, may be important in itself. These issues must nonetheless be viewed with care and circumspection. But the

[10] Ibid note 4
[11] Ibid note 4

Court of Appeal may find them relevant in communicating with the public.

CONCLUSION

I conclude with observations and suggestions. The Court of Appeal, as presently configured, has constitutionally almost taken over all the jurisdiction previously the preserve of the Supreme Court. The Supreme Court's jurisdiction is now limited, if not reduced only to matters in which the Court of Appeal will grant **Leave** to Appeal to the Supreme Court. This means that in reality, the Court of Appeal is the Supreme Court of the **"First Instance,"** while the Supreme Court is the Court of Appeal of the **"Second Instance"**

It may sound simplistic and unrealistic, but one can forsee a situation in which the Supreme Court will have no appeals coming before it in the future. Hence no work to do.

The Court of Appeal will be the busiest Court, particularly that the number of High Court Judges has been increased. The Court, to justify its establishment, will have to be more accessible and more interactive with members of staff and members of the public. The Court will have to speak to the public and the public will have to recognise the Court.

In my presentation, I have attempted to stimulate discussion by touching on some of the rules of **judicial etiquette** and

initiatives that are underway in a number of jurisdictions that might be considered to improve the Court's relationship with support staff and members of the public in the process of demystification. These initiatives include enhancing access of the news media to Court hearings, televising Court proceedings or delivery of judgments, access to judicial decisions, communication with the public through websites, social media and court visits as well as interviews with judges.

These initiatives have their own challenges; but can be modified to fit the Court's circumstances and environment.

I wish all the newly appointed judges of the Court of Appeal all the best as they embark on the historical voyage of establishing the New Court.

I Thank You.