

THEME: “Strengthening the capacity of the Judiciary to respond to the needs of the Public”

“Discussion on Delays in Criminal Trials – Stakeholder perspective”

INTRODUCTION:

We are all familiar with the saying in the dispensation of justice that “Justice Delayed is Justice Denied”. Conversely justice hurried is as just as acute since due diligence is not done in the quest to expeditiously dispose of cases. In that regard any delay and hurry in the dispensation of justice is perceived critical to the attainment of justice.

In Zambia, there are 5 key stakeholders in the Criminal Justice System (CJS) whose roles are equally vital and therefore require concerted efforts for the proper, fair and efficient administration of justice. These CJS and these are:

- The Judiciary
- The National Prosecution Authority and other regulatory institutions vested with prosecutorial powers
- Legal Aid Board
- The Zambia Police Service and
- The Zambia Correctional Service.

CAUSES OF DELAYS IN CRIMINAL TRIALS

As one of the CJS player, we have identified the following as causes of delay in the dispensation of criminal justice, which we have attributed to almost all the mentioned stakeholders;

1. The Judiciary

✓ **Lack of magistrate courts in a number of Districts**

We recently conducted a research whose aim was to establish the presence of subordinate courts in 7 provinces with the exception of Lusaka, Copperbelt and North-Western Provinces. It was

established that there are a total of 25 districts which lack magistrates in these 7 provinces and these are mostly in newly created districts, whilst in some districts the lack is necessitated by the going on either study or vacation leave by the lone magistrate. These districts are distributed as follows:

i. Northern Province

- a. Mungwi
- b. Luwingu

Total no. 2

ii. Southern Province

- a. Gwembe
- b. Pemba
- c. Maamba
- d. Kazungula
- e. Chikankata
- f. Zimba

Total no. 6

iii. Luapula Province

- a. Kaputa
- b. Chilubi
- c. Lunga
- d. Milenge

Total no. 4

iv. Muchinga Province

- a. Shiwang'andu
- b. Chama
- c. Mafinga

Total no. 3

v. Central Province

- a. Chibombo
- b. Luano
- c. Ngabwe
- d. Chitambo

Total no. 4

vi. Western Province

- a. Lukulu
- b. Kaoma

Total no. 2

vii. Eastern Province

- a. Nyimba
- b. Mambwe
- c. Vubwi
- d. Sinda

Total no. 4

In order to have cases moving, that Magistrates resident in nearby districts conduct circuit courts in these districts. However the holding of such circuit courts heavily depends on the availability of funds which unfortunately is a scarce resource for the whole government. Sometimes cases are adjourned for long periods.

This challenges also extends to magistrates who have been transferred to other jurisdictions without concluding their pending cases. Logistical support to enable them conclude those cases is hardly available and many times we have had to discontinue proceedings after several adjournments then recommence de novo before other magistrates.

✓ **Inadequate Court rooms and Chambers**

It is common knowledge that the Judiciary has for quite some time now been faced with a critical shortage of adequate court rooms and chambers especially along the line of rail. In Lusaka for example, both Judges and Magistrates share court rooms to an extent that they apportion time in which to hear cases despite their long cause lists. This unfortunate situation leads to slow disposal of cases.

✓ **Reliance on issuance of committal certificates as opposed to conducting Preliminary Inquiries**

Despite the Criminal Procedure Code providing for holding of Preliminary Inquiries as a way of committing matters to the High Court, the subordinate Courts rarely or never hold PIs. This is even in cases where a matter pends before a Court for a long time due to non-issuance of a committal certificate by ourselves. In cases where the Police have not adequately investigated a case, there is a back and forth process between them and ourselves in the perusal process and sometimes this process takes over 6 months.

If Preliminary Inquiries were conducted, the apparent back log of uncommitted cases would be a thing in the past and consequently reduce the delay in disposing of cases.

✓ **Insistence on having ‘clean’ monthly returns by Circuit Courts**

There have been considerable instances when our State Advocates have been forced for lack of a better word to conclude a trial midway so that the presiding Judge does not have pending cases reflecting on his monthly return. This is particularly so for Honourable Judges who conduct circuit. Our State Advocates in such instances have been left with no choice but to succumb to the pressure and use the infamous but all powerful nolle prosequi to conclude the cases.

Since we are committed to ensuring that law and order is maintained for the security of all citizens, after the entry of a nolle we order the Police to arrest the discharged the persons. Inevitably, this leads to such persons' cases finding themselves at the bottom of pending cases and instead of having their cases concluded within a month or so, they wait another year before their matter is heard again! In all this the person who suffers the most is the victim who in effect gets re-victimised by the same institutions he sought justice from.

From our stand point, it is better for honourable adjudicators to be a bit more flexible when attending to our applications for adjournment to either a later date within the session or to the permanent residence of the honourable adjudicator as opposed to concluding the matter within a session for the sake of a return. Most times, our request for adjournments are prompted by circumstances beyond the control of the Authority.

✓ **Delays in processing appeal records**

There are many instances where appeal, confirmation and sentencing records are not processed on time. These matters in some instances take over a year to be heard after leaving the court of first instances. This inevitably leads to delays in the dispensation of justice.

2. The Zambia Police Service

✓ **Inadequate human and financial resource at the Forensic Laboratory**

Despite the creation of the state of the art Forensic Laboratory, delays in concluding forensic investigations have not reduced due to inadequate resources. We have been informed that the reagents used to examine and the protocols used for storing samples are very costly. Most times results needed for a trial are not ready on time.

✓ **Lack of investigative resource**

Delays in the disposal of cases is sometimes caused due to lack of investigative resource at the place of investigations. This leads to the transmission of samples to Provincial headquarters and or Lusaka in some cases. There is heavy reliance on Public Analysts at the Food and Drug Laboratory at UTH regardless of where the offence took place. Another scarce resource are pathologists in most areas and this also results in delays in that investigations pend till a pathologist examines a body after exhumation. Needless to add that the pathologist movement to such areas depends on the availability of funds. Lastly on this point, the Zambia Police Service does not enough specialised investigators, for example forensic officers thereby contributing to delays as the same few officers have to attend to all the cases.

✓ **Delays in investigations and transmitting dockets to the NPA**

As Authority our policy on docket perusal is that a docket should be worked on without a week of being received at any of our cases. Meaning that we either issue committal certificates, consents or nolle within that period and I must report that we have tried to strictly follow that. The challenge however sets in when the Zambia Police Service receive dockets which we direct should be re-investigated. It seems these investigations take as long as the Police can take. For example there is a Lusaka District docket which I perused in 2015 and requested that two people be re-interviewed. I received it this year after almost 8 months and wondered how such a simple task would take that long to work on.

3. The Zambia Correctional Service

✓ **Delays in moving transferred remanded prisoners**

In cases where the Court has ordered than an accused be medically examined at Chainama Hills Hospital, we have observed that the Zambia Correction Service has taken too long either to transport the prisoner to the Hospital and back. We are currently defending a case where we have been sued partly

because the Zambia Correction Service did not move a remanded prisoner almost a year an order for his transfer was signed by the Court

✓ **lack or untimely communication on the status of prisoners due to appear before a session**

There have been several instances when matters especially in the Supreme Court have been adjourned due to lack of information surrounding the status of an appellant. The Zambia Correction Service does not communicate to us till the morning of the session about the known or unknown whereabouts of appellants not before Court. It is extremely difficult for us to accordingly enforce the attendance of such appellants within 30 minutes and we end up applying for adjournments.

4. Ourselves (NPA)

✓ **Lack of specialised training**

Due to financial constraints we have failed to offer State Advocates and Public Prosecutors specialised trained in a number of areas requiring specialised skills. This has resulted in delays in that the few who are trained are made to either attend to most of the demanding cases or to offer consultations to those who are not trained. Ultimately cases have been adjourned on account of non-availability of these trained staff.

✓ **Inadequate preparation of cases**

There are certain times when we have not adequately prepared cases when presenting them before. The reasons range from hurried investigations to ill preparedness on our part. This results in unnecessary adjournments

✓ **Failure to secure timely attendance of witnesses**

Despite the establishment of Witness Management Fund pursuant to the NPA Act, No. 34 of 2010, government has not yet started allocated funds towards this Fund. We have been mobilizing finances from other activities and

administering the Fund on a small scale basis and has not been decentralised yet.

We have in many instances failed to secure the timely attendance of witnesses at Court mostly on account of resources. Either because logistical support was not requested for or if it was, then the request was made late. Other times we have failed to secure witnesses because of lack of transportation to the far areas they might be, impassable roads and non-availability of witnesses due to change of address or other incapacitation.

RECOMMENDATIONS

Most of the problems highlighted hinge on inadequate financial resources which consequently lead to inadequate infrastructure, human resource and logistical support. We therefore recommend the following which cut across all the players in the CJS

- Increased budgetary allocations which should support the development of infrastructure development
- Continuous intensive professional development for all involved in investigations, prosecutions and adjudication
- Flexibility in the discharge of functions
- Increased stakeholder meetings at district, provincial and national levels aimed at ironing out cross cutting issues
- Rolling out of specialised services to all provincial headquarters