

**DELAYS IN CRIMINAL TRIALS – STAKEHOLDERS’
PERSPECTIVE**

**A DISCUSSION PAPER PRESENTED BY THE HON.
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DELAYS IN CRIMINAL TRIALS – STAKE HOLDERS **PERSPECTIVE**

There is no better way to begin this discussion than with the invocation of the old adage; JUSTICE DELAYED IS JUSTICE DENIED. In a criminal trial, every day that passes by without the trial moving forward is an injustice to both the accused and the victim of the crime. Trial and disposal of criminal cases in an expeditious fashion is the hallmark of the criminal justice system.

Because the criminal justice administration involves several players who will also be giving their thought on the subject, my duty is to focus on the Judiciary's perspective only.

In this discussion, I attempt to highlight some of the factors that cause delays in criminal trials in our jurisdiction. The factors to be discussed in this paper do not in any way represent an exhaustive list. They are rather, a reflection of my personal experience both as a Magistrate and as a Judge.

My colleagues on the High Court bench may have different experiences but I believe that some of the factors in my paper, are common ground for all first instance trial Courts in Zambia.

At the end of this presentation, it is my hope that I will have laid sufficient ground and basis for discussion.

Delays in trials of criminal cases have the tendency to create a negative perception on the Judiciary and more often than not have given rise to allegations of corruption against Judges from the general public.

MAJOR CAUSES OF DELAYS IN CRIMINAL TRIALS

A. NONE AVAILABILITY OF WITNESSES FOR THE PROSECUTION

This is a problem that affects criminal trials both in the Subordinate Courts and the High Court. In the Subordinate Court, when an accused person takes plea and a plea of not guilty is entered, the usual practice is for the Court to give that case a trial date or dates as the nature of the case may demand. It is at that point that the prosecutor should indicate to the Court whether or not the date or dates suggested by the Court provide the state with reasonable time for the presentation of its witnesses at the trial.

It is however, not unusual for the prosecutor to turn up on the date appointed for trial only to inform the Court of the unavailability of witnesses followed up by the inevitable application for an adjournment.

In other instances, the state will avail witnesses piece-meal resulting in numerous adjournments of the case. As a result, a trial that could have been concluded within a day would go on for weeks, months or even years in some cases due to the failure by the state to avail all the witnesses at the first sitting.

In the High Court all sessions to be held in a calendar year are published in a Government Gazette in advance and the same are disseminated to all the criminal justice system players. It is therefore expected that everybody would be prepared for the session. Further to that a cause list for each session is prepared and distributed to all the players at least 14 days before the commencement of each session. At Lusaka we are working on having cause lists published at least, 30 days before the session begins.

This gives an opportunity to the state through Zambia police to round up all the witnesses in the cause-listed cases. On the opening day of the session following gaol deliveries, pleas are taken and trial dates for each case are set within the period of the session. For a local session the period is a calendar month whereas for an outside session the period is 21 days.

B. **CALLING OF TOO MANY WITNESSES**

In certain instances, witnesses whose testimony is either of no real probative value or repetitive are called thereby making the trial unnecessarily long. It is not uncommon to find a list of witnesses comprising up to 15 or more witnesses and upon reading the depositions of all the witnesses, it becomes clear that a good number of them are just passengers whose testimony would have no effect on the case for the prosecution.

C. **LIBERALITY IN GRANTING ADJOURNMENTS**

This is most common at Subordinate Court level where, every application for an adjournment by the state, no matter how frivolous is granted because a Magistrate's session is confined to a single day; the pressure to dispose of a criminal trial within a specific period is not felt. Adjournments are also viewed as freed up time for the Magistrate to attend to personal issues.

This is unlike in the High Court where a session lasts 21 or 30 days within which the cases on the cause list ought to be disposed of. If a Judge does not conclude trial of a case within the session, then the Judge must create space outside that session to conclude trial and that can be a challenge given that the Judge and the other stake-holders have other cases to attend to.

The situation is even more complicated in outside sessions because that might be the only session for the Judge at that station during the year and as such the Judge may not be able to go back to the station to conclude trial.

In many instances, when the Judge is unable to commence trial in a case during an outside session, the easy way out is to adjourn the case to the next session. The problem is that the next session will be before a different Judge thereby raising a procedural impropriety in that a Judge can only adjourn a case cause listed before him to himself and not to another Judge.

In such circumstances, the proper action would be to arrange for the Judge to return to the Station at an appropriate time to hear the case or order that trial takes place at the Judge's station on a date agreed upon.

D. **OVER CAUSE-LISTING**

In certain cases, more cases than can be tried and disposed of within the session are cause-listed. It has been observed that in certain cases, for outside sessions which only last three weeks, up to 40 cases would be cause-listed. This creates

pressure on the Judge which may result in compromising quality in a bid to dispose of all the cases.

E. **POOR WORK ETHIC AND DIARY MANAGEMENT**

These may take the form of;

- reporting for work late and starting court business late.
- Failure to take full control of one's court during trial.
- Failure to read the depositions in advance in order to be able to deal with any issues that may arise during trial promptly and decisively without having to rise to render a written ruling.
- Allowing two or more trials in a day, which may not be concluded necessitating adjournments.
- Allowing for piece-meal trials where the Judge hears some prosecution witnesses on a day and adjourns to another day and meanwhile commences another trial the same day which also does not conclude.

In my view, it is desirable and neater to start trial in one case and conclude it than spread trial in one case over a number of days.

F. **PROCEDURAL BOTTLENECKS**

These may be more pronounced in civil trials than in criminal trials. It is however noted that these can pose a serious

challenge in criminal trials as well if the trial Court is not very conversant with procedural requirements as set out in the Criminal Procedure Code, the Juveniles Act and other Statutes that regulate criminal trials.

I will cite only two examples one at Subordinate Court level and another at High Court level. In trials before Subordinate Courts when they sit as Juvenile Courts, it is a requirement that they strictly comply with the provisions of the Juveniles Act. If the Juvenile Court is not conversant with procedural requirements for the taking of a voire dire, the Court may be forced to stand down the matter to read or consult thereby causing a delay in the trial.

In the High Court, the conducting of a trial within a trial may pose a challenge if the trial Judge is not conversant with the procedure.

G. **FEAR OF BEING OVERTURNED BY THE APPELLATE COURT**

No trial Judge would like their decision to be overturned on appeal. As a result, that fear may in certain cases, lead to adjournments at the instance of the trial Court in order to ascertain the way to proceed. This fear, though mostly affects timely delivery of Judgments.

By way of capping up the two previous factors, I leave the participants with the following quotation from a book entitled: The Judicial Process: Text Material and cases, 2nd Edition. Ruggero J. Aidisert West Publishing Co. St. Paul Minn 1996 P5.

“Meanwhile trial Judges are on treadmills of their own, hampered by trials that are weeks and months unnecessarily too long, frustrated with procedural rules and required by statutes or appellate courts to perform rituals akin to a catholic church solemn high mass prior to making the most simple ruling.”

I thank you for your attention.