



REPUBLIC OF ZAMBIA

**KEYNOTE ADDRESS BY THE HON. CHIEF JUSTICE OF ZAMBIA
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**AT THE OFFICIAL OPENNING OF THE LAW ASSOCIATION OF
ZAMBIA'S 9TH ANNUAL LAW CONFERENCE HELD ON 21-22
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AT AVAN RESORT, VICTORIA FALLS, LIVINGSTONE

SALUTATIONS:

I feel immensely privileged to have been invited to participate in this Annual Conference of the Law Association of Zambia and to give the keynote address at its official opening. It is for me both an honour and a pleasure to be accorded this rare opportunity to speak at this important forum of the organisation for which, some two decades ago, I was a proud Council Member for five years and for which, furthermore, I was twice its elected Honorary Secretary. As some of your members already know Mr President, I truly relish every opportunity to engage in beneficial conversation with mainly youthful members of my professional species.

The Annual Law Conference, that precedes the Annual General Meeting of the Association (AGM), has now become part of the venerable tradition of this Association, and I am delighted to have been associated with it over many years. Some of you may recall that on 27th April, 2007, I was privileged to speak on the occasion of the official opening of your pre-AGM Conference at this very venue — then called the Zambezi Sun Hotel. Five years later, on 26th April, 2012 to be precise, I was again lucky to have been invited to grace a similar event in this very hall. On each of those instances, I thoroughly enjoyed a lively, well attended conference, and most definitely, I fancied exceedingly what I regarded as the high social points of those gatherings of lawyers in Livingstone - the dinner

dances that proceeded the AGMs. On both those occasions, I came as your Attorney General and leader of the Bar. I have come today as the Chief Justice of the Republic. I hope, though that my enjoyment this time around will, at the very least, be the same.

Mr President, I hope you will forgive me if I begin by asking your members to join me in saluting you and the outgoing LAZ Council for your sterling stewardship of the Association during your tenure, part of which include what was, on all accounts, a difficult time. The period leading to the general elections of 2021 saw political violence and the use of some unusual, if not altogether indecent tactics that sometimes flew in the teeth of democracy and the rule of law. I think the response of the Association under your charge to all those ill-starred happenings was most measured and laudable.

You and your Council also deserve commendation for superintending over the successful completion, after a long period of gestation, of the very imposing multi-million Kwacha office complex - the new LAZ Secretariat on Lagos Road. Its construction, as you know, is the realisation of an old dream conceived many years ago, but which has finally reached fruition during your tenure. Congratulations!

I am sure I speak on behalf of many other dinosaurs that are either at the height or towards the end of their legal careers, when I say that we feel reassured that the future of the legal profession in our country is in good hands. In our young lawyers like the majority assembled in this hall, I see a commitment to upholding the rule of law. I also

perceive great potential for intelligent interrogation of the law, and decent advocacy for social justice, equity and fair play. We need, however, to continue to give them the necessary encouragement as well as an injection, periodically, of a healthy booster dose of professional ethics. My confidence, Mr. President, is all the more reinforced when I see among the new practitioners so many women and young people of diverse backgrounds. As we know learned colleagues, ladies and gentlemen, diversity comes with the courage, perspective, and creativity that are necessary for the legal profession to engage with current and future challenges to our profession, our shared values and our way of life.

Mr. President, from my vantage point as Chief Justice of the Republic of Zambia and as head of one of the three arms of Government, and from the fortunate position of being a father and a grandfather, I know all too well that there is a general sense of anxiety in our nation at the moment - some uneasiness of sorts, especially after the reclassification of our country by the World Bank, a couple of weeks ago, as a low-income country from the lower middle-income status.

Less than a year after the historic national election that saw a change of political guards, some amongst our people are raising legitimate questions, in some cases prematurely perhaps, about the certainty of the economic and democratic fundamentals on which we have continued to build our nation. Many of our citizens are anxious about the economy which, after a rebound in the price of copper, boosted

the country's GDP in 2021, has now seen the country face fluctuating fuel prices and a soaring cost of living generally. This is paradoxically amid the declining inflation rate. Our people are worried about income levels as well as the absence of jobs for our youths, the recent recruitment of over 30,000 teachers, many of them youths, and the ongoing recruitment of 11,000 others in the health sector, notwithstanding. There is a seeming sense of unease even on issues over which, after the 12th August, 2021 elections, we all thought we had achieved national consensus – good governance, for example.

Because of these heightening concerns in the nation about the trajectory of the Government and its agendas, justly or unjustly, it is fitting that your Association, Mr. President, should candidly start reflecting on some of these issues if that will help to clear the decks and to measure the relevance of your Association to the hopes and aspirations of the Zambian people. This should be so even if there are many out there who are surreal and simply do not want to hear uncomfortable yet inalterable historic truths.

In my humble estimation, the theme for this year's conference, "*The Role of Lawyers in Advancing the Law as an Instrument for Economic Growth, Social Order and Justice*", amplifies greatly the current mood and expectations of the people of Zambia - the use of the law in the pursuit of a new, buoyant and inclusive recovery from the ravages of perceptively deficient governance, impunity, economic stagnation

(and, in many respects, economic regression) brought about by what has been described in some sections of our society as poor economic management of our country, characterised by excessive borrowing and rampant corrupt activity and criminality in general. Yet, the theme also speaks to new and potential misrule, corrupt activity and transgressions.

For good measure, may I add that the story of the corruption that animated past public dealings is no longer unfamiliar to any decent, well-meaning, good and reasonable citizen of this country who is of full age and competent understanding.

It is no secret that corruption induces inefficient economic performance in a country - any country for that matter. It inflates the cost of low-quality goods and services, hampers long term foreign and local investment, diminishes the ability of the Government to raise revenue and thereby leading to high taxes being imposed on fewer and fewer tax payers. It debilitates the Government's capacity to equitably provide essential public goods and services - especially for the majority poor. It promotes high inflationary trends and makes the attainment of set economic goals impossible. More solemnly, corruption undermines and reduces the efficiency of professionals and discourages professionalism while giving political cadres and quacks a field day. It induces a culture of sycophancy and political praise singing, building in the process, blind political loyalties and cronyism which fosters and entrenches impunity and skewed democratic processes.

Want of transparency and accountability as well as unthinking regionalism promotes injustice, inequity, unfairness and inequality in governance and in the distribution of scarce or limited resources by the Government. In many cases, mediocre, incompetent and corrupt officials, rather than resourceful, efficient and competent hands, find their way into positions of power and authority which they use to manipulate to their own selfish ends and not to the common good of the Zambian people. There is invariably a frightening collapse of law and order, a ruin of societal and normative values, leading to low level performance in the socio-economic development of the country.

Where corruption thrives, chaos reigns. To be certain, for many copacetic and reasonable bystanders, it all feels as if the country has fallen into a dark, malevolent and alarming abyss. Democracy is chocked while selfish accumulation by connected individuals becomes the norm.

Today, all concerned and well-intentioned citizens must commit to changing that desperate state of governance and economic malaise. There is of course never any chance that in changing from the old order to the new, we should continue to do things in the old, business as usual, fashion. Change in the way of doing things is inevitable, and it must be visible, though sometimes it may come painfully

slowly. This entails that we, as a nation, have to endure, for some time at least, unorthodox, but brave measures designed to redress the wrongs and damage done to the economy over many years. And so, I ask: where is the legal profession and the lawyer in all this?

Mr. President, I think that the theme for your Conference this year resonates closely with what is expected of you lawyers in the wake of our evidently unhappy history. In executing the mandate under the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia, your Association, Mr. President, has come, over the years, to be acknowledged by reasonable citizens within our borders for its sense of responsibility and commitment to community betterment, making a difference in deepening the rule of law and democratic governance in general, and in particular, the administration of justice and the preservation of the integrity of our institutions - especially governance institutions. You must maintain the momentum, and in some cases 'increase the volume' to use a common street expression.

In a legal system such as we have in Zambia that allows everyone to vindicate their rights, you lawyers no doubt have an important role to play. You are the silent protectors of our society. Yours is to help balance that inequality of power, granted that the potential for abuse of political power always lurks in the background. You should leave no stone unturned in your quest to maintain that necessary equilibrium in the dynamics of our society and must continue to work

unremittingly to advance the cause of the truth, the whole truth and nothing but the truth.

You are expected to provide checks and balances that otherwise would not be available without you. You must help find answers to the difficulties facing many of our people interacting with the legal system because, after all, you lawyers are trained to understand what the law is and how it works. You know how laws relate to each other and how to navigate the legal system. You understand the role of other legal actors, and how to develop legal game plans. More importantly, you know how to find out what you do not know and how to learn quickly about matters other than the law. You also know how to discover the aspects of a people's problems that can be addressed by the law and those that cannot, among other things.

I believe quite sincerely that armed with this special knowledge and skills, you lawyers are in a better position than many in this country to explain the historical context of the problems the country is facing and whether what is being done to address what are supposed to be the effects of past economic governance should give hope to our people. Yes, I think the legal profession and the individual members of the profession must make an important contribution to shaping the conversation around why our country is in a bad place economically and what should be done from the legal perspective. As professionals, it is important that you give a factual exposition of the what is and the whys of corruption unimpeded and uncoloured by

extraneous considerations such as politics which bear little or no resemblance to honesty and integrity. But in doing so, there is need for introspection; to consider the role you have in the past played, are playing now and can potentially play to either sink or better the socio-economic conditions of our people.

I find most agreeable the sentiments attributed to Norman Redlich, Dean at New York University Law School. In discussing the role that lawyers play in our society, he stated, in paraphrase, that it is the burden and glory of lawyers that they are expected to live by a high professional standard and earn a living at the same time. Lawyers do not have the luxury of the clergy who can live in the temple and condemn the market place. Lawyers have instead to carry the standards of the temple into the market place and practice their trade there. He concluded that a country which questions its moral behaviour invariably questions its lawyers.¹ I humbly submit that Redlich's view of your burden as lawyers remain uncannily prescient.

And so, I want to candidly speak to you more specifically, albeit very briefly, about lawyers as moral agents and their role as adjudicators, as transaction advisors, as defence counsel, as prosecutors, as in-house counsel, as academics, etc., in the renewed fight against corruption in our body politic.

I have, of course, looked at the no doubt rich menu of topics to be discussed during this Conference, led by high-rate resource persons

¹ / Redlich, "Lawyers, The Temple, and the Market Place," in The Record, p. 200.

who include no less a personage than the august figure of Prof Muna Ndulo himself. I suggest that in all the topics, there is room for factoring in the issue of corruption or at least thinking seriously about it as you deliberate.

I think also, that two points are beyond argument though they deserve rehashing. First, lawyers are critical to a legal system which can resolve differences swiftly; a system which is capable of offering the necessary legal support for a dynamic enterprise economy, guaranteeing equal access to justice and equal treatment before the law for all citizens and ensuring that the supremacy of the law and respect for human rights animates all that we think, say and do.

Second, the quality of performance of you lawyers, especially the practicing ones, is an important factor in consolidating economic growth and democracy in this country. Evidence from credible studies confirms that a well-functioning legal system encourages business growth and with that, rising incomes. Where there is no rule of law and formal contracts cannot be respected and enforced, business will not grow and investors will not risk their funds.

In the fight against corruption, therefore, you lawyers in your multiple characterisation as adjudicators, as transaction advisors, as defence counsel, as prosecutors, as in-house counsel, as academics and others, are without doubt, important actors. It is you lawyers

who can and must contribute meaningfully to liberating our nation from corruption and misperceptions around it.

It is no exaggeration to state that all well-meaning, recent efforts in the battle against corruption, including the introduction of the Economic and Financial Crimes Court, are unlikely to record a high success rate if the majority of lawyers take an opposing stance or act as dispassionate onlookers over these initiatives. In fact, our lawyers wherever they are and in whatever they do, must be willing to work together in mutual respect and trust in the fight against corruption. We must all, as players and stakeholders in the legal system, share the same commitment if we are to succeed.

For as long as the conduct, character, and commitment of lawyers at any level, in eradicating corruption remains in issue, the corruption fight will remain elusive and our people consigned to perpetual poverty. So, you lawyers should all strive to be yourselves persons of unimpeachable integrity and vision, who are ready, willing and able to provide moral, legal as well as technical leadership.

We must all view corruption as a 'public enemy' for corruption is not just a character problem or one of misadventure or merely wrong behavior which affects only a handful of members of the society; it is an economic crime that affects us or our own directly. It is not just money and opportunity unjustly lost or stolen; corruption is also a killer. Think, for example, about the patient who dies from

substandard medication corruptly procured in lieu of genuine, efficacious medication.

It is an embarrassment to the legal profession, is it not, that there are some lawyers who do not take the ideals of this noble profession seriously and only think of ways of fleecing the country or their clients of their resources. Some lawyers, I grieve to say, will stop at nothing to satisfy their large appetite for material wealth, sometimes using incongruous ways to make money and more money, even if this means being accessories to crimes, especially those involving corruption. To put it crudely, some of your members, Mr. President, must work at addressing the deficit in them of good fiscal morals and professional ethics.

Is it not a matter of serious regret that we see lawyers, in dramatically increasing numbers, standing up at forums away from the courts, not to fight corruption, but to root for corruption instead? And please make no mistake: as the *paterfamilias* of those running the criminal justice system, and generally those in curial adjudication, I, as Chief Justice, must be the first person to acknowledge that all accused persons are constitutionally entitled to legal representation by lawyers of their choice. It is a right ingrained in the rule of law. And it is the lawyer's business to present to the court all that his client would have said for himself or herself if he had possessed the requisite skills and knowledge.

I think my concern is, nonetheless, legitimate. Some of our lawyers appear to have neither respect for their oath of office and calling nor reverence for good conscience. In keeping with the best traditions of the legal profession, lawyers should not skirt the edges of legal ethics when it comes to representing suspects. What the lawyer accepts to do and how he does it should not, in my humble view, be determined merely by how much power or influence the person being represented holds or how much money he or she is willing to pay for legal services.

What is self-evident today is that some lawyers, probably laboring under the erroneous view that they are rather 'hot stuff', become culprits in the calculated or systemic delays in concluding corruption cases, employing what can fairly be described as 'Fabian tactics' designed to derail what should otherwise be straight forward proceedings. They choose to bring about an intricate mesh of tactical maneuvers under which the substantive merits of the cases before the courts become blurred or buried, using all the while, due process considerations to turn proceedings into highly legalistic and costly affairs. For the courts concerned, this invariably strikes at their autonomy and leadership in judicial proceedings and, while litigation winds its laborious ways through the procedural maze and the delay that ensues, institutional paralysis of sorts is sometimes experienced.

Have we not heard fairly disturbing reports of lawyers being party to wrong doing in the course of performing what are supposedly fiduciary duties on behalf of their clients, especially corporate ones,

commingling financial accounts and creating highly disconcerting conflict of interest situations? We have heard, have we not, stories of lawyers being cited in the Trends Reports by the Financial Intelligence Centre for being possible architects or accomplices in corruption and money laundering activities?

We have equally heard of lawyers being convicted of fraudulent conduct, and even then, continuing in their odious ways of deceiving innocent consumers of legal services while on bail pending appeal. And, in some cases, we have unfortunately heard of lawyers seemingly colluding with adjudicators and court support staff, either directly or through third parties, and sometimes with opposing counsel, to defeat the course of justice. More grievously, we have also heard of lawyers who are adjudicators exerting wrongful pressure or making inappropriate pecuniary demands on litigants. We cannot hope to win the fight against corruption if some of our legal experts maintain this kind of mindset towards the scourge of corruption.

I think, Mr. President, that it's high time that lawyers who have progressively cast themselves in the role of antagonists in the fight against corruption must be made to recognise their own responsibility to temper the demands of their financial interests with proper considerations for the collective economic well-being of our country and its people, recognising always that they too, must take a broader view of the Zambian society's aspirations and general good than the legalistic. Pyrrhic victories, which will vindicate what is legal

but not necessarily what is 'right' in the context of the larger society's aspirations, may be won in the courtroom but that should not be the endgame.

Lawyers, especially good ones, must realise that there is greater injustice to the Zambian people when they play for time or employ Fabian tactics in legal proceedings, all in the quest to frustrate justice or to get richer at the expense of real justice for the majority poor. After all, the Holy Book proclaims that a good name is better than riches.

We should all, as players in the justice sector be rightly concerned with the poverty of our people brought about by corruption. Is it not a shame, that we witness some of our neighboring countries which are far less endowed with natural resources than we are, but which have succeeded in keeping corruption levels low, scoring tremendous economic development while we regress economically?

Whether they be adjudicators or transaction advisors or defence counsel or prosecutors, or what not, corrupt lawyers are uniquely unsuited for any responsibility or leadership role in the legal firmament and outside it, whether in this season or beyond it. They inflict enormous reputational carnage to your profession. In its vetting responsibility in appointments to critical legal positions, your Association should make it a practice to doubly check that it is not only the prescribed qualifications that should count when people are

to be entrusted with public engagements, a background of immaculate morality, irreproachable integrity, pure intentions and grounded patriotism must be confirmed too. You ought as an Association of learned men and women to know how to separate the wheat from the chaff in the profession.

It is my humble submission, Mr. President, that as the good agents of social change which they must be, lawyers should be in the frontline in the reorientation of the mind-set of the Zambian people in the renewed fight against corruption and the social and economic renaissance generally. They must all, individually and collectively, commit to the creation of a clean legal system which is a *sine qua non* to defeating corruption. As a clean legal system must come from unblemished characters, corruption within the legal profession, grand or petty, must be eradicated first.

We need credible transaction legal advisors; we need credible prosecutors; credible defence counsel and credible adjudicators too, if the law is to be truly advanced as an instrument for economic growth, social order and justice in this country.

The reassuring news, Mr. President, is that by far the majority of your members and our adjudicators are decent men and women who have the craving to combat corruption and create a clean legal environment. These lawyers must be encouraged to stand up and fold their sleeves to do battle with graft. On the other side of the spectrum,

those few of your members with an inclination for fueling sleaze must be encouraged to deliberately purge themselves of their dishonest tendencies and, wherever possible, they must be roped into the fight against corruption.

Let us reflect on the wisdom of our local saying that a call to walk together is not a declaration of cowardice (*twende babili, temwenso*). Let us all, more than ever, in the true spirit of patriotism and duty, hold our heads up high as we fight corruption in our society. Let us face the future with courage, hope and assurance that with commitment we shall be 'victors in the struggle for the right'.

Look around you, believe in our country and its dream of 'dignity and peace 'neath Zambia's sky' and be inspired by it. We should together build a better country where our children and our grandchildren and their children will live in peace and dignity. Our tomorrow should be better than our today. In this spirit, let each one of us do our best knowing that the battle is ultimately the Lord's!

On this ecclesiastical note, I end my address, convinced that I have made my case but have exhausted neither yourselves nor the topic in the process. It is now my honour and privilege to officially open this year's LAZ Annual Conference. I wish you very fruitful deliberations. May God bless us all, and our homeland, Zambia.

Thank you!