



THE JUDICIARY OF ZAMBIA

Transforming the People's Courts Through Rekindling Public Confidence and Trust

By

**The Hon. Chief Justice
Dr. Mumba Malila, SC**

MY VISION



The Hon. Chief Justice of the Republic of Zambia,
Dr. Mumba Malila, SC



JUDICIARY OF ZAMBIA

“I ask for your unflinching support... I remain confident that with the cooperation of all, an unbending sense of duty and an everlasting relish for hard work we can together succeed in reforming the image of the Judiciary and creating an institution that performs to the expectation of the Zambian people. Rest assured that my doors will remain open to all to discuss any matters that may help us to deliver quality service to our people.”

On 22nd December, 2021, I took the oath of office before the President of the Republic of Zambia as the ninth Chief Justice and head of the Zambian Judiciary since independence. On the same day, I addressed the entire Judiciary of Zambia, virtually, setting out my vision for the Zambian Judiciary during my tenure.

I shared this vision fully alive to the fact that the Judiciary has time and again forged ahead with strategic plans in place. These plans have shaped the directions in which my predecessors steered the institution. The current Strategic Plan was adopted in 2021 and sets out its purpose as achieving 'a just and accountable Judiciary guaranteeing justice for all'. The Plan has identified two thematic areas namely:

- 1. Administration of Justice resulting in Justice for All; and**
- 2. Governance and Management of Resources resulting in High Quality Services.**



The Hon. Chief Justice takes his Oath of Office before the President of the Republic of Zambia, His Excellency, Mr. Hakainde Hichilema

The thematic areas are as they ought to be; in broad terms. My vision is not set out to derail this Strategic Plan but rather to compliment it and those to come. This booklet thus highlights the synergies between my vision and the strategic plan in place. I must be quick to mention that the vision set out here is not shackled in a strait jacket. Like every plan or vision, there is always room to modify and embrace new progressive ideas to keep in tandem with the ever-changing times.

Let me acknowledge from the outset that despite the Judiciary having strategic plans in place, it has been and continues to be plagued by challenges which have dulled our standing in the eyes of the public, rendered us answerable to the populace from whom we derive judicial authority and hampered public access to our court houses.

We should not shy away from acknowledging the challenges we have been facing if we really want to improve the operations of our institution. We need to tackle these challenges head-on.

When our Republican Constitution proclaims in Article 118 that judicial authority derives from the people, it in effect recognizes that the hallowed grounds of justice belong to the people of Zambia. All adjudicators as agents of the people's authority must therefore strive to assure that they make the courts they run places of fairness and equality. Put differently, by our work as adjudicators, we must vindicate the notion that our institutions are indeed the people's courts.

Our collective goal should be to transform the courts into user friendly legal institutions of civility and accountability where all users are treated with respect and courtesy.

In the transformed Judiciary, the best building blocks of the justice delivery system should be allowed to survive and flourish while the relics that are no longer valuable should be abandoned. Only then can any transformation agenda instill a renewed sense of trust and confidence in the Judiciary.

The next three chapters highlight the three themes that run through the backbone of my vision for the Judiciary of Zambia in conjunction with the Strategic Plan and will give practical props on how we may tackle the challenges the institution faces.



Chief Justice Mumba Malila addresses child offenders at Katombora Reformatory School in Kazungula, Southern Province



Chief Justice Mumba Malila's engagement with the Media at a workshop organised by the Advisory Committee on Public Relations and Information

Waning public confidence in our institution is a matter of urgent concern which has to be tackled eye ball to eye ball. There is need for us to reverse this diminishing public confidence by living out our core values of Independence, Impartiality, Transparency, Accountability and Proficiency. A litigant's wishes are to approach an independent and impartial Court which dispenses timely justice in an open and well-reasoned manner.

Members of the judiciary must all be alive to the distinct significance of the judicial estate in a plural society such as ours. It is the balancing, harmonizing and unifying force in our body politic. It is the guarantor of justice, a fundamental value well entrenched in our Constitution. It is therefore imperative that the judiciary enjoys public confidence if it is to be successful in carrying out its duties. All is lost if a county's judiciary cannot command respect from the public.

This need for public backing is critical for the judiciary since, unlike the other arms of government, it is not ushered in by the electorate. Although we in the Judiciary are isolated from politics and the volatility of the electorate, our doings are overseen and affected by the court of public opinion. As our country is facing various changes and challenges, strengthening the confidence in the judiciary represents a goal in itself. I am alive to the fact that we live in a society where the work of all arms of government, their institutions and departments, is generally subjected to constant public debate and criticism.

Today, the judiciary receives criticism which is expressed with less reverence and more eagerness than in the past. Indeed, legitimate criticism of the adjudicator who fails to live by the core values of the judiciary and the rule of law should never be suppressed. Yet we see that even when the conduct of the adjudicator is above board, too often the lay public and some within the legal profession find it way too easy to attack the judge rather than simply disagree with the merits of the decision.

Addressing the Erosion of Public Confidence in our Justice System



The Hon.
Chief Justice, Dr. Mumba
Malila,
on his tour of
courts and
correctional facilities
in Southern Province

However, I do acknowledge the fact that in some cases the assessment of our institution has been based on misleading or erroneous information. Nevertheless, there is an urgent need to gain back the lost public confidence in the judiciary.

Research shows that many factors have an impact on public confidence in the judiciary. The level of confidence can be influenced not only by factors within the control of the judiciary, but also by factors outside the control of the judiciary.

Factors such as:

- Nature of media reports being made about the judiciary;
- socio-demographic characteristics of our communities;
- funding levels of the judiciary; and
- staffing levels.

However, the level of public confidence in the judiciary is of course also influenced by the performance of the judiciary itself. Factors relating directly to the operations of the judiciary, which might influence the level of confidence include:

- the outcome of a case and the reasoning of the judgment;
- the manner in which proceedings are conducted;
- delayed judgments and rulings;
- how the lawyers and the litigants are treated; and
- the quality of service offered by court staff.

The lists above are by no means exhaustive but merely illustrative of the myriad of issues that have a direct bearing on the confidence that the public may have in our institution. To regain public confidence and trust in the judiciary everyone in the institution ought to take into consideration the following factors:

- Improving our customer care services by ensuring that judiciary staff are responsive to enquiries made by members of the public;
- Ensuring that departments, divisions or registries that interface with the public have service charters that will be periodically reviewed to ensure the public easily navigate their way through court procedures;
- Ensure that through the appropriate channels within our institution, the public is made aware of the on-goings of the institution through press releases or on appropriate occasions through interviews in the print media, radio or even television;
- Maintaining a professional cadre of judiciary staff deployed in appropriate departments where they can marshal their expertise to the fullest extent possible, thereby enhancing justice delivery;
- Transparency in the employment and promotion of judiciary staff so as to ensure that only competent and efficient staff are retained and rise up in the ranks;
- Encouraging continuous professional development amongst Judiciary staff;
- Setting up performance benchmarks for all staff positions subject to regular evaluations;
- Marshalling the appropriate disciplinary procedures for underperforming personnel; and
- Regular engagement with stakeholders on how to improve our service delivery.

The Judiciary cannot influence the way in which the media creates headlines, or how the general public make up their mind about a case or the entire institution. However, a positive change in the attitude of all adjudicators and support staff can go a long way in slowly moulding the way in which the public perceives the institution. A simple change in reporting times for example can easily inform the public that members of staff are eager to serve them in a timely manner. In the same vein, a judgment or ruling delivered within the appropriate time lines, legal or administrative, can help build the public's confidence.

We must never forget that our most scarce resource is time. If we guard it jealously and use it appropriately, the public will begin to appreciate the work we do even more.



Chief Justice Mumba Malila
and Madam Justice Chilombo Bridget Maka
meet the members of the Zambia Correctional Services at
Livingstone Central Correctional Facility

WHAT

INFLUENCES

PUBLIC TRUST AND CONFIDENCE? ? ?

- ✓ Openness / transparency
- ✓ Being forthcoming
- ✓ Easily available and understandable court information and decision
- ✓ Decisions with stated rationales
- ✓ Efforts to increase public understanding of courts work
- ✓ Responsiveness



Chief Justice Mumba Malila and the Hon. Deputy Chief Justice, Mr. Justice Michael Musonda, SC pose for a photo with the then Law Association of Zambia Council at the Judiciary head quarters

Enhanced Judicial Accountability



“ there should be free flow of information in the institution as well as to the public on how we are carrying our core functions.”

At the launch of the Performance Management System in Lusaka on 27th July, 2022

Accountability is a crucial aspect to our functions as the authority we exercise as an institution is delegated by the people of Zambia. My vision and the strategic plan emphasise accountability of all judicial staff in the manner they execute their duties and acquit themselves. It is a phenomenon that should be embraced from elementary levels of our institution to the upper echelons.

Accountability goes far beyond subjecting our staff to disciplinary procedures but demands free flow of information in the institution as well as to the public on how we are carrying out our core functions. Commitment to our duties seen through punctuality in reporting for work and carrying out tasks timeously. These are also part of accountability.

With respect to adjudicators, accountability extends to rendering well-reasoned and articulated decisions that will convince a losing litigant that a Court interrogated the issues in dispute with intellectual clarity and impartiality. Unless adjudicators turn away from the sometimes cavalier manner of handling cases to a zealous and truth-seeking endeavour whose ultimate aim is to dispense justice to the parties involved as well as promote the rule of law in society above the whims and caprices of human frailty, they will continue to receive a bashing from the society. Even if such bashing is in a whisper, it should concern us.

In order to address this concern, the judiciary is in the process of fully operationalizing a performance management system that will seek to measure performance of all our staff. In my inaugural address on 22nd December, 2022, I did speak to the need for an appraisal system in the following terms:

“ **Curbing delays in the delivery of judgments**

may entail reforming our rules so that the prescription of deadlines for hearing and delivering of judgments is also aligned to the Judicial Code of Conduct so that delinquent adjudicators are made to account. Additionally, a performance appraisal system based on the returns and the qualitative presentation of adjudicators' work will be introduced so that adjudicators consistently performing badly do not escape the notice of supervising officers. ”



Admission to the Inner Bar of the learned Attorney General and Solicitor General by His Lordship the Hon. Chief Justice, Dr. Mumba Malila, SC

I must at once dispel any notion that this Performance Management System is being put in place to fix any specific individual or group of individuals. Neither is it meant to make our core function somewhat difficult and unbearable.

Performance management of courts is not a strange phenomenon. The modern judiciary cannot divorce itself from appraising its members. Proper management of the institution must be supplemented by setting performance targets. I, therefore, urge you to embrace this new way of doing things. It is one way of accounting to the people of Zambia for the power that we wield on their behalf.

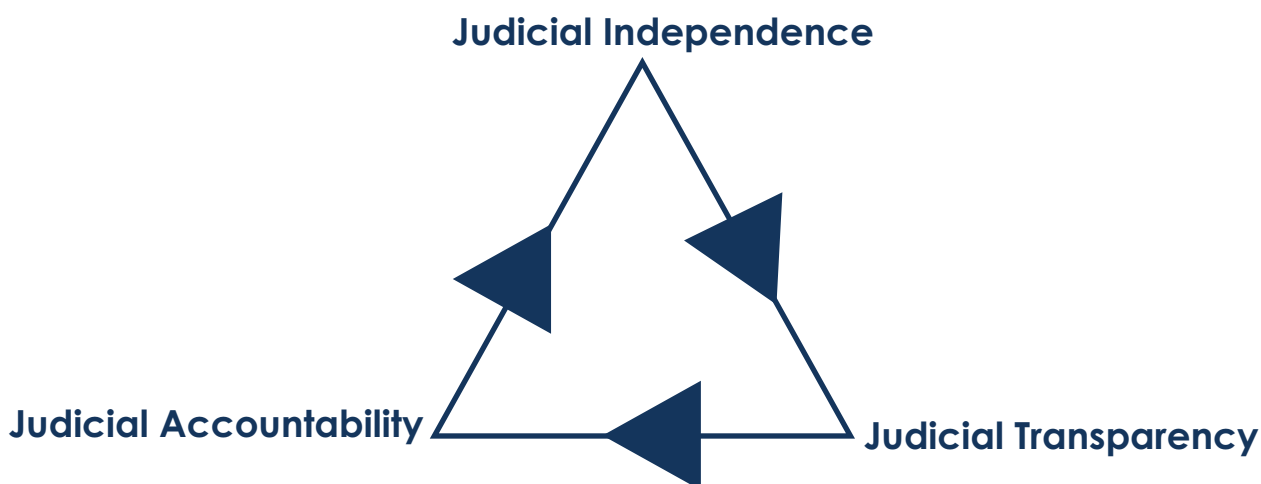


Judges and members of staff look on at the launch of the Performance Management System in Lusaka on 27th July, 2022

“

...adjudicators must not be afraid to be accountable for the work they are delivering. Someway or somehow, the performance of adjudicators and support staff must be evaluated, because courts are financed by public means and play an important role in the protection of the rule of law in this country and the day-to-day life of citizens, businesses and companies.

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**Judicial independence must go hand in glove with
accountability and transparency**

Accountability in the face of misconduct cannot ensure proper running of the institution. Misconduct within the judiciary by adjudicators or support staff breaks down the very fibre of what is necessary for a functional judiciary. As I have highlighted in the second chapter, the judiciary cannot exist without the trust and confidence of the people. Adjudicators and support staff must be accountable to legal and ethical standards. Of course, in holding adjudicators accountable for their behaviour, there must be respect for judicial independence of judicial decision-making.

It is the duty of the judiciary to support measures that hold it accountable. While the majority of our adjudicators serve with honour and dignity, ethical slipups should be corrected, and grave breaches of trust should be acknowledged. Our institution should be willing to help develop ethical standards for all its staff and be an active part of any enforcement mechanism. To quote former United States President Theodore Roosevelt: "No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it. Obedience to the law is demanded as a right, not asked as a favor." All our members of staff must be seen as ethical and subject to meaningful correction when it is necessary. All deserving cases of misconduct shall be subject to the applicable disciplinary procedures so as to engender a spirit of proper conduct amongst all judiciary employees.

Increased Access to Justice



Her Honour the
Vice-President,
Mrs. W. K. Nalumango
and the
Hon. Chief Justice
Mumba Malila, SC
grace the launch of
the National Juvenile
Justice Strategy
(2022-2026)
at
Mulungushi
International
Conference
Centre

Litigants and various vulnerable groups and individuals, for example, women, children, persons living with disabilities, the indigent, the rural population, the youth and older members of the society whose rights and interests have habitually been disregarded or minimalised need to access the judicial system easily and efficiently to claim their rights and interests. We must therefore widen the doors of justice to all Zambians in the following manner-

- We have to prioritise infrastructure development of court houses in unserved rural parts of the country;
- The structural plans of court houses should consider the vulnerabilities of the differently abled persons;
- We must take advantage of the digital age by constructing smart court houses with the relevant technology that will enable us provide a host of services to the public such as remote court hearings and remote examination of trauma or child victims in a bid to provide a safe environment for them to tender evidence;
- realignment and streamlining of some of our courts. Prior consultations will have to be had with relevant stakeholders accompanied by appropriate constitutional and statutory changes;
- Standardisation of service delivery across all courts. This will involve distribution of education materials on judicial services and court procedures and public sensitization through channels such as radio programmes;
- We also have to continue promoting public and easy access to decisions of superior courts through the judiciary website and any partnerships that will facilitate publication of judgements and decisions rendered by superior courts. Case digests and summaries are another innovative tool that can assist adjudicators in their research as they prepare rulings and judgments; and

- Increasing access to justice requires us to be a multi-door institution by encouraging an expansion of the number of doorways of justice delivery. The institution currently boasts of Small Claims Courts and Court-Annexed Mediation. There is need to build on these two. With respect to the small claims court, we need to ensure that they are available in all provincial headquarters. The court-annexed mediation will have to be optimised so as to encourage more parties to settle their disputes through this medium. Small Claims Courts and Court Annexed Mediation have significant potential not only to relieve the 'mainstream' court system, but to deepen the substance of justice provision within the Judiciary.

You may be aware that the Constitution directs that some of our superior courts shall be devolved to the provinces and progressively to districts. I take it that the purpose of this provision is to ensure that court services are gradually decentralized and brought to the users in the provinces and ultimately the districts. It is all about facilitating physical access to courts by the people of Zambia in the provinces and districts. This is in fulfillment of the broader concept of access to justice.

Access to Justice must be understood in its wider context that entails more than just positioning court houses close to the communities or shortening the distance to places where justice is dispensed and the physical state of such premises. Access to justice includes other variables and parameters like, the procedural mechanism for the resolution of disputes, the quality of the human and material resources available, the quality of justice delivered, the time it takes for the delivery of justice, the moral quality of the allocators of justice, the affordability of the cost of seeking justice in terms of time and money, the quality of the legal advisers that assist litigants and accused persons - especially, and above all, the virtuousness and impartiality of the operators of the system.



Chief Justice Mumba Malila, Deputy Chief Justice Michael Musonda and Judges of the Superior Courts pose for a photo with Country Representatives World Bank

Our institution is guided by the supreme interests of the people of Zambia, we in the Judiciary must start and have in fact started to focus on building a judiciary that court users, wherever they are, can trust; one that is fit, ready and willing to perform its constitutional role to the expectations of the people in whom judicial authority reposes.



As you are aware, we are in the process of effecting widespread institutional changes and reforms in the Judiciary. In addition to strengthening the institution itself, we intend to increase access to court houses and infrastructure as well as court support services. We are determined to see that each person in Zambia that has a legal grievance which they desire to settle in court can easily get to a court house to have that grievance vindicated, and when at court, to get justice – and I mean real justice within the rules under the law.



The Hon. Chief Justice, Mr. Justice Mumba Malila SC being conferred with the status of Patron of the Chartered Institute of Arbitration (CIArb) - Zambia Branch

Of course, we still have to face the challenges of lack of resources, unavailability of court infrastructure and inadequate volumes of litigation at that level to justify the cost of placing resident judges. In the future, and resources permitting, we hope to have more than one resident judge in these provincial headquarters.

The need for access to justice cannot be overemphasized. Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.



Chief Justice Mumba Malila hands over a vehicle for use at Namwala Subordinate Court in Southern Province



Chief Justice Mumba Malila poses for a photo with the Executive Committee Members of the Chartered Institute of Arbitration – Zambia Branch

Conclusion



Transforming this institution will take concerted efforts from each and every member of staff. Moreso for support staff who are the first contact with the public. We must always be professional and efficient in serving the public and desist from any under-hand practices as they will not go unpunished. To regain public confidence and ensure access to justice for all, we have to fervently hold on to honesty, efficiency, self-discipline, impartiality, punctuality, dedication to duty and transparency.



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