



REPUBLIC OF ZAMBIA



**THE JUDICIARY
IN CALLABORATION WITH AGA-AFRICA**

**SPEECH BY THE HONOURABLE CHIEF JUSTICE OF THE
REPUBLIC OF ZAMBIA,**

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**AT THE OPENING CEREMONY OF THE TWO-DAY TRAINING
WORKSHOP ON CYBER, ECONOMIC AND FINANCIAL CRIMES**

HELD AT THE TAJ PAMODZI HOTEL, LUSAKA

ON 5TH DECEMBER, 2022

- It gives me immense pleasure to be present and grace this training program on cyber, economic and financial crimes. I have no doubt that this is but only the first of its kind in a series of similar trainings and workshops in these trendy areas of the law. This training could not have come at a better time than now when we just set the new tone in the way we conduct our affairs at the just-ended Judicial Conference in Livingstone.

Distinguished participants, you would agree with me that nations worldwide are grappling with loss of resources at an alarming rate through illegal activities, largely orchestrated through illicit financial flows, tax evasion, corruption, computer-rated pilferage, to mention but a few. Noting the debilitating effect that these activities occasion on developing nations such as Zambia and the complexities associated with dealing with these activities, which usually tend to be transnational in nature, careful investigation, specialised prosecution, and adjudication have become imperative.

Distinguished participants, in order to enhance Government's efforts to combat illicit activities and ill-gotten wealth which have negatively impacted the country's economic growth, the Judiciary as an arm of Government responsible for legal interpretation and enforcement, has to up its game. It is not business as usual. For this reason, in early January this year (2022), pursuant to Article 133(3) of the Constitution of Zambia and the High Court Act, Chapter 27 of the Laws of Zambia, I promulgated Statutory Instrument No. 5 of 2022, which gave birth to the latest Division in the High Court - the Economic and Financial Crimes Division. This is designed to enhance specialised adjudication over financial and economic matters.

Now, you will realise that the first courts of instance in respect of these crimes are the Subordinate Courts. Whereas Article 120(3)(c) envisions divisions at the subordinate court level, we are yet to start creating such divisions. As a result, my Administration has, for administrative convenience, identified some subordinate courts presided over by carefully identified magistrates to handle economic and financial crimes on a fast track basis. These courts will progressively specialise and preside over economic and

financial crimes. This will invariably boost the efficient settlement of such matters.

Ladies and gentlemen, as I stated earlier, you will agree with me that in this digital age, a host of economic and financial crimes are committed in virtual space as criminals are taking advantage of the rapid technological advances in the banking and financial sector where a crime can be committed anywhere in the world and at any time. Economic and financial crimes therefore, largely interface with cyber-crime which compounds their complexity as criminals continue being highly innovative in the cyber-space. This does not only make their detection difficult, but present continuing difficulties in investigation, prosecution and adjudication. Due to the technical nature of cyber, financial and economic crime, it is expected that our judges and magistrates will rise to the occasion. This can only be done when they are well-equipped with the foundational markers on how to efficiently deal with such matters.

Distinguished participants, allow me to express our sincere gratitude the Attorney General Alliance-Africa (AGA-Africa) for its willingness to partner with us in this training, by not only offering its resources but also by securing experts on the subjects that will

be discussed over the next two days. In our midst, we have Judge Kapindu of the High Court of Malawi, Mr. Abbuh Usman from Nigeria and Mr. Jeff Welty from the United States. I welcome you all to Zambia and wish you a good stay and fruitful interactions with us. This is not the first time that AGA-Africa has partnered with us. The organisation has offered similar technical assistance in capacity building for our adjudicators at different prior occasions. We remain grateful for this continuing partnership, which was formalised by the signing of a Memorandum of Understanding between the Judiciary of Zambia and AGA-Africa on 1st December, 2022 in Livingstone, Zambia during our Judicial Conference, 2022 which AGA-Africa also supported.

I also record my appreciation to the Irish Embassy in Zambia and the Irish Rule of Law Institute for agreeing to join this important training, despite very short notice. I am very pleased to note that the Irish Rule of Law Institute has provided two resource persons in Judge Peter Kelly and Judge Alex Owens, who will share the Irish perspective on some of the topics that will be discussed. Although the two distinguished judges are joining us virtually, I have no doubt that we shall draw on their knowledgeable skillful input.

I further acknowledge the respective resource persons from the National Prosecutions Authority, Drug Enforcement Commission, Anti-Corruption Commission, Human Rights Commission, Financial Intelligence Centre, Zambia Revenue Authority, Zambia Information Communication Technology Authority, Zambia Police and the legal fraternity. Your participation in this workshop indicates the collaborative effort needed in the fight against economic and financial crimes.

I have had a thorough look at the programme and I am pleased with the range of topics selected for discussion. No only do I expect the deliberations to be engaging but that the topics themselves will offer useful comparative perspectives that give our adjudicators a broader understanding of economic and financial crimes.

As a way of sampling, I am particularly looking forward to the topic on legislation and rules of court on case management of economic and financial crimes. As some participants may be aware we are in the process of putting up rules of court to specifically deal with economic and financial crimes and how to fast-track adjudication of the same. We are currently relying on the general procedural rules applicable in the subordinate courts and the High Court. These rules are however, not always adequate for specialised

adjudication and we look forward to the best practices that we can adopt in the rules that we are crafting for enhanced efficient adjudication of economic and financial crimes.

Non-conviction-based asset forfeiture is yet another topic of interest as it is a key tool in recovery of assets from criminals, which would then be used for the benefit of the citizenry. Non-conviction-based asset forfeiture is recognised in the United Nations Convention Against Corruption. Article 54(1)(c) enjoins state parties to:

consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

Section 29 of our Forfeiture of Proceeds of Crime Act, No. 19 of 2010, has domesticated article 54 (1)(c) of the United Nations Convention Against Corruption by allowing for applications for non-conviction-based asset forfeiture in respect of tainted property.

Regrettably, it would appear that these provisions are little known by many of those that may have committed economic and financial

crimes and would wish to forfeit property acquired through such crimes without the possibility of criminal prosecution.

I assume that this topic of discussion will explore instances in which such an application can be made by the prosecution and what would be considered as appropriate cases. Can it be made for instance, in cases where the alleged perpetrator is elusive or in which an accused person is immune from prosecution?

We all know that non-conviction-based asset forfeiture may raise human rights considerations, such as property rights and the accused's right to a fair trial and presumption of innocence until proved guilty. That said, it promises to be a white-knuckle topic of discussion and one we can draw great insight from. We look forward to hearing how other jurisdictions are dealing with this aspect.

May I at this stage make a note to the participants. I hope you enjoy this training and grasp all the key concepts that will be of invaluable assistance to your work as you adjudicate on cyber, economic and financial crimes. I implore you to ask all those critical questions. Your mandate is so closely tied to the welfare of so many a people to whom you are accountable in the discharge of your duties. Get all the assistance you can get from this training,

even as we shall still arrange some future ones. Further, I urge you to use this training as an opportunity to network and also draw on international perspectives which would in turn enhance a better appreciation of economic and financial crimes.

In closing, I wish to thank the Chairperson of the Advisory Committee on Training and Continuing Education and your team for always seeking out partnerships to enhance the knowledge base of our adjudicators. I also thank all the members of staff of the Judiciary and the Attorney General Alliance-Africa, Zambia Office, for arranging this workshop.

With these few remarks, I now declare this workshop officially open and I wish you fruitful deliberations.

I thank you.