REPUBLIC OF ZAMBIA

REMARKS BY THE HON. CHIEF JUSTICE OF ZAMBIA
DR. MUMBA MALILA, SC

AT THE CEREMONIAL OPENING OF THE LUSAKA HIGH COURT

CRIMINAL SESSION ON 9 JANUARY 2023

AT LUSAKA

Speech by the Hon Chief Justice of Zambia Dr. Mumba Malila, SC at the ceremonial opening of the High Court Criminal Session at Lusaka on the 9th of January 2023

Distinguished ladies and gentlemen

I am pleased to witness this year's ceremonial opening of the High Court Criminal Session here at Lusaka, and are grateful to have been invited by the Judge in Charge to make some remarks. I am also glad that the theme for this year's ceremonial opening, as has been stated already, centers around enhanced access to Justice for children. In my estimation, this theme is apposite for two reasons. First, it comes barely a couple of months after the signing into law by His Excellency the President on 9 August 2022 of the Children's Code Act, No 12 of 2022. It is thus rather still hot stuff.

That Act, a milestone in its own right in the legal governance of children's affairs, came into effect on 11 August 2022. It is a comprehensive piece of legislation, providing for both civil and criminal Justice for children and juveniles and does, among other things, domesticate international human rights treaties to which Zambia is a party. Notable among these are the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

Second, the theme speaks to a fundamentally changed child justice landscape, brought forth by the Children's Code Act. The Act has introduced a whole range of innovative measures and obligations for various actors aimed at enhancing the welfare of our children, with the child's best interests being the paramount consideration. This is significant given the increasing numbers of late, of neglected children

finding themselves in conflict with the law; the rising phenomenon of 'junkies' on our streets being a significant reminder of the potential problems facing the child justice system.

It is enormously tempting for me to adopt the comments and observations made by the learned Judge in Charge of the Family Division of the High Court as my own and thereafter sit down. I have however resisted taking that lazy course as I want to stress a few issues of significance which the learned Judge in Charge may well have been constrained by the theme from venturing into. I trust that I will be allowed to take up the cudgels on behalf of the Judiciary and to go a step further into more uncomfortable territory.

For us in the Judiciary, the Children's Code Act has created humongous obligations which will require not only the realignment of our rules and practices in child justice, but also to secure additional adjudicators and support staff, as well as to acquire or put in place additional logistics and infrastructure. These are costly measures that require to be implemented in order to fully operationalise the Act. These measures should now be factored into the ongoing judicial reforms and cannot realistically be expected to be achieved overnight.

Talking about judicial reforms, permit me Hon Minister, my Lords and Ladies, distinguished guests, to take a detour and delve into a topic which for me is also at the heart of the theme of children's enhanced access to Justice — judicial realignments and changes, for any true and meaningful implementation of the new Children's Code Act will entail some judicial reforms of sorts. In this sense, the way the Judiciary handles the issue of reforms may well be a relevant indication of how the anticipated juvenile justice reforms will be handled.

Many of you will recall that just over one year ago on the 22 December 2021, when I was sworn into office as Chief Justice, I publicly shared my vision for the Judiciary during my charge as leader of this arm of government. I identified some of the systemic problems that afflict the Judiciary as an institution and stated that my vision was that of 'a transformed institution that will reclaim public trust and confidence, an establishment that will prime the fair administration of justice for all anchored on the core values of impartiality, independence, accountability, ethical and professional practices, fair procedures, and respect for human rights; a judiciary that society will identify with as a dependable ally in vindicating their rights and promoting the rule of law.'

I sought to see 'a Judiciary where there is improved access to justice for all [including children] and where unacceptable barriers to effective access to justice by our people are removed through the provision of adequate infrastructure, logistics — electronically, physically or by telephone; where the courts are accessed digitally while for those who are not fully able to take advantage of digital access, cheaper alternatives are facilitated.'

I also, above all, longed to see a Judiciary where 'the notoriety of the criticisms of the institution, encouraged as they were, principally by a culture of slackness and prevarication, were transformed into a chorus of plaudits and admiration for an institution truly offering a fair and responsive system of justice, easily accessible — one whose decisions are based on sound reasoning delivered timely and predictably by qualified adjudicators; one which is effectively managed and which fully utilizes technological advancement.'

In articulating that vision, I was very clear that to achieve the ideals of the Judiciary we crave for, we had to embrace and implement a series of administrative and legal reforms across the entire breadth of the Judiciary. The overall goal of the administrative and legal reforms envisaged was the attainment of excellence in justice delivery through:

1. improving ease of access to justice;
2. maintaining and improving high quality justice delivery;
3. ensuring consistency of judgments and timeliness in delivery;
4. providing an effective service to the public; and
5. protecting judicial independence.

It did not require any exceptional intellectual merit to understand that reforming the Judiciary would be a process rather than an event. It could thus not all be done in a week, a month or even a year. I was as clear then as I am today that judicial reforms are not a matter of either attaining everything or attaining nothing. Indeed, there are many small steps that can be taken even if a large leap is not, for financial or other impediments, possible to make. I mean that there are some less aggressive, but still meaningful, reforms that might spell good and generate sufficient levels of public confidence such as attitude and mindset change.

In the last one year, the Judiciary has had the torrid task of rebuilding and rebranding itself with varying levels of success. To this end, it will be recalled that we introduced, in January 2022, resident judgeship in provincial centers at Mongu, Solwezi, Kasama, Mansa, and Chipata. We created the Economic and Financial Crimes Courts at both the Subordinate and the High Court levels. For its importance, this is an issue to which I shall shortly return.

To enhance performance among adjudicators, and of course working in close collaboration with the Judicial Service Commission, a number of transfers of our staff were made. As intimated in my inaugural address, staff - both adjudicatory and support- who had pending disciplinary cases were assisted in their efforts to clear their names through the relevant disciplinary procedures given that discipline is an important factor in shaping the right mindset and attitude to work.

Other administrative changes made include the streamlining of our High Court procedural rules to promote efficiency and shorten the time for concluding litigation; greater scrutiny of returns and erring individual judges being called upon to account for delays and other failings identified.

Further, in July last year, a performance management system was launched. It is intended to help identify those of our adjudicators not performing to expectations so that corrective intervention measures are taken to avert lapses and inefficiencies degenerating into nightmares for litigants and other court users.

Information and Communication Technology (ICT) is one aspect that we have wholly embraced. A needs assessment for a Court Management System for Superior Courts in Zambia has been done and it is our hope, with the help of central government, that we shall move towards acquisition procedures and installation of the system, hopefully in the course of the year.

We have also taken the initiative to set up a Judicial Training Center, as exist in some neighbouring jurisdictions, to provide the necessary formal framework for continuous professional development so that the quality of

adjudication is enhanced. The preceding year was used to lay the necessary groundwork such as establishing the legislative framework, training of trainers, etc. We hope to get the institute off the ground this year. There are also ongoing amendments to various rules to make procedures better and faster. We have also taken steps to make the court's practices more transparent and less insular by strengthening our public relations unit.

These are just some of the incremental reform measures that the institution has introduced in a quest to better our service delivery and win back public trust. All this has been done against a background of significant constraints in our own public exchequer. These measures will surely pay dividends in due time as some of them have already began to do.

The more juicy and popular conversations about judicial reforms implicating such things as the court structure and hierarchy, particularly whether the existence of two apex courts is necessary and workable; whether the recruitment processes of all adjudicators satisfied constitutional imperatives; whether the Judicial Service Commission in its current state in which the Chief Justice does not sit, should continue to exist as it is; whether the current ordering of the courts from the Local Court through to the Supreme Court with possible satellite litigation in the Constitutional Court, are consistent with access to justice ideals, considering the time and cost of exhausting the appeal process; whether a review of the jurisdiction of individual courts is necessary etc., are matters that have rightly been deferred to a constitution review process which is presently beyond the Judiciary's purview.

I think it is important for all well-meaning individuals to acknowledge the measures taken in consolidating the gains made thus far in the direction of reforming our Judiciary for it to be preserved and strengthened as the main pillar for the reinforcement of the rule of law. For those who think, or choose to deliberately misinform the public, that nothing has thus far been done or is being done to bring about positive change in the Judiciary, I have a message for you: get your facts right. They are readily available. Reforming an institution like the Judiciary is not like painting a wall from one colour to another.

I must be very clear that we in the Judiciary are not averse to constructive criticism. While we will always adopt maximum equanimity in the face of criticism when it is well-founded, we are not necessarily flattered by criticism when it is vicious or irresponsible. I am certain that responsible citizens will not condone the imprudent actions of some of our citizens to ruin the Judiciary through baseless attacks and a wholesale dismissal of all the efforts taken in good faith towards reform. I call upon well-meaning citizens not to be fazed by individuals and entities bent on marring the image of the Judiciary for personal and political gain. We can all be a little bit more selfless and exhibit more honesty and integrity. We can, I am sure, all be less partisan and more nationalistic. After all the real test of levelheadedness and patriotism is to stand for, and do the right thing, even if it is unpopular or against your own perceived self-interest.

Let me revert to the Economic and Financial Crimes Courts and their performance in their first year of their existence within the broader context of judicial reforms and the fight against corruption. I must state from the outset that this corruption war will not be won overnight, but, with what the French call *volonté politique* (political will) and the support and active

participation of all persons of goodwill, who are in any case victims of this vice in one way or another, it will be won someday. We must all as citizens be committed to protecting the public purse.

Since their creation a year ago, the Economic and Financial Crimes courts have had their share of challenges that include infrastructure deficit. In terms of their performance, the nation-wide picture shows that a total of 59 cases have to-date been filed, 12 concluded, and 47 pending trials. The breakdown is as follows:

Lusaka

Total number of cases filed: 42
Total number of cases disposed of: 07
Total number of cases at various stages of trial: 23
Total number of cases awaiting commencement of trial: 09
Total number of cases pending judgment: 01
Total number of cases pending determination of preliminary issues: 01
Total number of cases pending the consent of the Director of Public Prosecutions: 01

Kitwe

Total number of cases filed: 10
Total number of cases disposed of: 01
Total number of cases at various stages of trial: 09

Kabwe

Total number of cases filed: 01
Total number of cases disposed of: 01

Ndola

Total number of cases filed:03
Total number of cases disposed of: 03 (1 appealed against)

Choma

Total number of cases filed: 03

All pending reallocation for commencement of trial.

At the **High Court** level, the picture is as follows.

Criminal: 06 cases filed; 2 judgments delivered and 4 matters pending hearing.

Civil: 19 applications received; 2 determined; 17 are pending hearing and determination.

It hardly needs emphasis that the rule of law demands that application of the laws of the land by these courts be done without fear or favour. Indeed, when one falls foul of the law, one must be dealt with accordingly, regardless of their status in society, and the law enforcement agencies and the Judiciary, must ensure that this is done, albeit within the context of due process.

I have at a different forum stated, and it bears repeating on an occasion such as this one, that the courts must remain independent and impartial, for these two values are vital components in sustaining people's trust and confidence. Public confidence in our work and processes must continue to be the marquee asset of the judicial estate.

Our adjudicators should determine cases based on evidence and the law and therefore, must not be unduly influenced by external pressures and factors such as political statements or indeed their own prejudices. Here I mean pressure from those who may express unfounded reservations on the performance of the Economic and Financial Crimes courts and proceed to pour cold water on their handling of corruption cases. We know that there is always a risk of push-back of all the corruption efforts by powerful

persons and sometimes by the very individuals being called upon to account, or by their proxies. I urge adjudicators in these courts not to feel discouraged.

The trials of persons before the Economic and Financial Crimes courts over their alleged involvement in acts of corruption, theft of public resources or causing financial loss to the Treasury, are being conducted in the normal manner, with the safeguards that the law affords to all accused persons, so that due process is respected.

The pace of disposal of many of these matters has admittedly been slow and has provoked the impatience of the people whose resources were allegedly stolen. They are agitated by the tardy prosecution process. They want results quickly. Some individuals undergoing trial, especially those on bail, have in exercise of their fair trial rights, hopped from one court to another, raising objections and interlocutory applications that have admittedly delayed determination of matters. Needless to state that in some cases, this might in the long run, delay the conclusion of their interaction with the judicial process.

In other cases, delays are occasioned by adjournments in instances, which are regrettably numerous, of the same legal counsel being retained to represent different accused persons appearing at the same time before different Magistrates. This means matters are delayed or put off on account of counsel's inability to be in two courts at the same time. In some cases, the prosecuting agencies have shown unpreparedness leading to adjournments and delays.

No matter how long it takes, the courts are expected, at the appropriate moment, to deliver their verdicts. I expect that if these individuals are found guilty on the evidence, the courts will apply the full rigours of the law. Those exonerated by the evidence will of course walk. I am also expectant that the criminal conduct, if any, of those currently mismanaging in any way the financial affairs of the state, stealing in various forms from the public purse, or flouting procedures and causing financial loss to the state- in short,those engaged incriminal conduct, must know that they may be continuously undergoing surveillance and scrutiny by our law enforcement agencies, and will be brought to justice as soon as prima facie evidence of criminality is established.

Whatever people may say about these courts, they are working. More importantly they are, as will be the reformed juvenile courts under the Children's Code Act, a product of judicial reform.

Hon Minister, my Lords and Ladies, distinguished guests, after this long, informative and hopefully not tortious diversion, let me in conclusion say three more significant things about children and enhanced access to justice. First, the Judiciary will treat the oprationalisation of the Children's Code Act as part of its judicial reforms plan and has prioritised its accommodation in the reform agenda because the law is already in force. To the extent possible, we are committed to ensuring the implementation of the Children's Code Act. The reforms necessary to do this require a significant amount of support from the central government.

Second, the Judiciary is studying the provisions of the Children's Code Act to identify interpretational and other challenges and will keenly share with line Ministries and other stakeholders, problematic areas, especially those

that are unimplementable or that may cause disharmony with constitutional provisions and other laws.

Third, the Judiciary realizes that effective judicial reforms regarding children and juvenile justice go beyond mere modernisation of processes and the provision of logistics and infrastructure. It is people, assisted by these facilities, who will make the new child justice system work. Judicial reforms will, therefore, target adjudicators and court staff for appropriate capacity building interventions so that they serve the public, child witnesses and children in conflict with the law competently and efficiently. We are all in this together. Let each one of us do their best to ensure that we build a fair and responsive justice system for all. We are on a positive and sustainable path into the future. Let us turn the tide of negativity which has characterized some of our interactions and narratives, towards expressions of optimism, coupled with realistic and honest assessment of progress. May God bless you all.

I thank you for listening