



REPUBLIC OF ZAMBIA

THE JUDICIARY

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

**AT THE OFFICIAL OPENING OF THE TWO-DAY CONFERENCE ON
ECONOMIC AND FINANCIAL CRIMES ORGANISED BY THE IRISH
RULE OF LAW INTERNATIONAL AND THE EMBASSY OF IRELAND**

ON 14TH MARCH, 2023

AT THE TAJ PAMODZI HOTEL, LUSAKA

I am pleased to make some brief remarks at the opening ceremony of this important conference on economic and financial crimes. The conference comes to us by way of technical assistance by the Irish people through the organization, Rule of Law International, and has been ably facilitated by the Irish Ambassador to Zambia, Her Excellency Bronagh Carr.

This interactive conference is a culmination of the generous efforts by the organizers which started in earnest after the visit to the Judiciary and other justice sector institutions in June 2022 by the Irish Ambassador to Zambia and a representative of the Irish Rule of Law International. Following that visit, two areas of cooperation in the justice sector under the project styled “Access to Justice in Zambia” were identified. These two areas are economic and financial crimes and access to justice for unrepresented accused persons in correctional facilities.

I must therefore, thank profusely the Irish Embassy in Zambia, working with the Irish Rule of Law International, for their indulgent offer to organize this capacity building interactive conference designed for players involved in handling economic and financial crimes in Zambia.

May I also record my appreciation to the Irish Judges and other legal experts who have accepted to share their experiences, the representatives of the Irish Rule of Law International and all other distinguished facilitators drawn from Ireland and Zambia, for kindly committing their time to this engagement. To the visiting delegation, I warmly welcome you to Zambia and wish you a very pleasant stay.

Economic and financial crimes, particularly corruption in all its ugly forms, are stealthy plagues that have a wide range of corrosive effects on the Zambian society. They generate considerable social damage to society. In fact, they have notoriously been the bane of the country's efforts to develop economically.

Little wonder then that well-meaning people in this country have, in overwhelming numbers, denounced the canker of these crimes, especially corruption and abuse of public resources which have over many years, and increasingly in recent times, engulfed the public life of our nation to the detriment of the country's economic progress.

The recent publication of Zambia's score in the 2022 Corruption Perception Index, organised by Transparency International, shows a stagnation from 2021 in our standing, at 33 points, a result largely based on the plethora of corruption allegations and exposés. It is difficult to dispute that ranking granted the revelations of the reports of the Auditor General, the trend reports by the Financial Intelligence Centre and Transparency International Zambia, and also if the recent corruption and money laundering scandals being unravelled in Zambia are anything to go by.

It is the expectation of all people of goodwill that existing law enforcement agencies will rise to the occasion, and collaborate with one another to fight relentlessly, and help eliminate corruption and related vices.

And there can be no doubt whatsoever that the fight against corruption and other economic and financial crimes in Zambia is a collective one and all hands must be on deck if it is to be won. Let me take this

opportunity to clarify for the sake of the ill-informed commentators and those who assume, or deliberately desire to mislead the public to believe that the Judiciary has no role in the fight against corruption. Contrary to such a misperception, the Judiciary is expected to play a pivotal and central role in the fight against corruption.

The Judiciary, as we all know, has a historical responsibility of delivering justice: justice for those who transgress the law and for victims of those transgressions. It is within the judicial system that society has its main instrument to prevent and fight corruption and similar wickedness.

By virtue of the provisions of the Constitution, all cases involving corruption allegation are invariably referred to the courts for adjudication. Put differently, the courts, established by law, are the only institutions vested with powers to adjudicate between the State (prosecution) and the individual (accused) and to determine the culpability or otherwise of an accused person in any corruption case.

Secondly, no person can be condemned on the basis of any investigation or findings without recourse to the courts. To do so would be a negation of the cherished principle of the rule of law which is the foundation of our democracy. It hardly bears emphasis that the courts are the primary guardians of the rule of law, and that the rule of law is an important ingredient to better economic outcomes for it demands that there be integrity and accountability in the governance of any country. That is probably why the Economist described the rule of law as the “motherhood and apple pie of development economics”.

Credible studies around the world have confirmed that entrenchment of the rule of law brings about beneficial economic outcomes, and is critical to developing the trust and certainty needed for entrepreneurship activity.

Thirdly, any findings, decision, determination or pronouncement of our courts on the fate of any individual in respect of any particular allegation is final. This finality enables the individual concerned to, in subsequent proceedings, plead *autrefois acquit* or *autrefois convict*.

More pointedly, Article 11 of the United Nations Convention against Corruption - a crucial international treaty to which Zambia is a party - emphasizes the decisive role of the judicial branch in the fight against corruption, and establishes that in order to carry out this role effectively, the judicial branch itself must be free of corruption, and that its members must act with integrity.

It is undeniably obvious that there are some conditions attaching to the courts' involvement in the whole corruption fight. First and foremost, is independence: the Judiciary must be independent and free from any form of interference or influence in terms of funding, political manipulation, etc. This will enable adjudicators to determine cases freely and competently on the basis of facts presented before them viewed against the law and nothing else.

Second, our courts must ensure that cases bordering on corruption and other economic and financial crimes are dealt with expeditiously so that, where appropriate, illicitly acquired public assets are recovered and quickly returned to the owners, i.e. the public, for its use. As well as instilling public confidence in the fight against

corruption and dissuading others from engaging in this vice, dispatch in concluding these cases will also ensure that those facing corruption allegations do not carry the burden and stigma for too long before their fate is determined, considering the unintended damage such allegations do to the presumption of innocence. To this end, while ensuring strict adherence to due process and fair trial requirements, the courts must ensure that recourse to unnecessary technicalities and delaying tactics are avoided or outrightly rejected.

Third, and this speaks directly to the importance of this conference, the fight against corruption will be more effective when adjudicators and prosecutors are properly trained to handle corruption cases, are better motivated, disciplined and committed to duty. Adjudicators with a shaky understanding of economic and financial crimes can be a dangerous clog in the administration of justice just as much as ignorant or ill prepared prosecutors are. It is therefore, important that both the adjudicator and the prosecutor are provided with proper training in economic and financial crimes cases.

In this regard, the courts, the prosecution and investigators must be properly equipped with modern facilities and knowledge to be able to fast-track the determination of economic and financial crimes cases by understanding clearly the modus operandi of persons accused of these cases. They must all be well-positioned and prepared, both intellectually and otherwise, to handle the great challenge posed by the ever-changing dynamics and face of corruption and other economic crimes.

Fourth, incorruptibility. A corrupt bench or prosecution agency can only worsen the fight against corruption. For the Judiciary to position itself properly in the fight against corruption, it must first purge itself

of corruption. It is awkward and most undesirable for the court, which must be the bastion of hope of the common man, to stand as an “accused” in the fight against corruption. What we desire to see is a well-functioning judiciary applying credible rules in the absence of corruption. The same applies to prosecutors.

The establishment in 2021 of the Economic and Financial Crimes Court at the High Court level and the administrative designation of part of the existing structures of the Subordinate Court as a fast track facility to try high level economic and financial crimes, was done for the high purpose of stemming long delays in concluding criminal cases of an economic and financial type, and in some cases complete impunity for those involved in this kind of cases.

The courts are not intended under any circumstances, to be used as an avenue for political persecution or vengeance. They are intended to do justice to all manner of persons and at all times. Accordingly, the overriding obligation of both adjudicators and prosecutors in those courts should be to attain justice. Justice first, justice second, justice third and justice always. Justice for the accused individuals and justice for the victims of corruption - the public. After all the rule of law which these courts must uphold requires that public officials, past and present, are held accountable for their stewardship of public resources.

The ultimate beneficiaries of the existence and work of these courts indeed, of the actions of all of those who man them, are the Zambian people.

I am pleased to note that the carefully selected topics to be covered in this conference deal with everyday issues that confront our adjudicators

and prosecutors as they deal with economic and financial crimes. These topics revolve around the challenges in the investigation, prosecution and adjudication function of economic and financial crimes in Zambia. There will also be a sharing of the experience of the Irish criminal procedure relating to financial and economic crimes; effective procedures in pre-trial and the trial process; proactive prosecutions and how to deal with practical issues regarding presentation and admissibility of evidence. Of course, dear to us on the bench is judicial case management – what role does an adjudicator play in ensuring fair and efficient progress and disposal of economic and financial crime cases? How can judicial time be prudently used during trial? What should be the realistic rate of case disposal? etc.

Other equally mind-stimulating topics relate to seizures and forfeiture of assets and disposal of proceeds of crime. All these topics and more are most relevant to the initiative we are currently undertaking to strengthen our processes and procedures by crafting Court Rules that will facilitate the effective and efficient disposal of financial crimes. Although the working draft of the rules has now been finalized, the useful exchanges from this conference and best practice will certainly be considered for the enrichment of the draft rules.

I have no doubt that the facilitators are well vested to lead the discussions that will spur meaningful deliberations and useful resolutions.

In conclusion, I wish once again to thank the Irish Rule of Law International, the Embassy of Ireland, the Steering Committee and all who played a role in organising this Conference, a first of its kind. I thank you all for listening and I now declare this Conference open.