

SPEECH BY THE HON. CHIEF JUSTICE DR MUMBA MALILA GIVEN AT THE OPENING OF THE VALEDICTORY SESSION OF THE SUPREME COURT HELD AT MULUNGUSHI CONFERENCE CENTRE ON 27 SEPTEMBER 2023 TO COMMEMORATE THE COURT'S GOLDEN JUBILEE

We have assembled here today for a truly remarkable occasion - a Special Valedictory Session to commemorating 50 years of the Supreme Court, under the theme "Empowering the Next Generation of Justice Leaders." And I am glad that in perfect interpretation of that theme the previous generation of justice leaders personified by no less judicial luminaries than the august figures of the first indigenous Chief Justice, Hon Justice Annel Silungwe, retired Chief Justice, Hon Justice Enerst Sakala, and retired Supreme Court Judge of note, Hon Justice Florence Mumba, are here alongside the current generation of justice leaders with many of the future justice leaders sit in the audience.

That there is a commemoration today is clear, but why a valedictory session? In this jurisdiction, valedictory sessions have thus far been associated with solemn occasions to celebrate the lives and times of judges or legal practitioners of some standing who have departed to higher life. At other times, we hold these sessions to mark the bowing out, usually on retirement, of judges from their offices, after meritorious service to our institution or elsewhere in the administration of justice.

Whether as an assembly for the celebration of service to this nation, or the celebration of a life well spent, what is certain is that valedictory sessions are to honour the distinguished lives and times of great legal titans who have imprinted their marks permanently on the sands of time and in the chronicles of either side of the legal profession, i.e. the Bar or the Bench. Today, we recognise and celebrate the legal giants who have donned the judicial robes on the Supreme Court bench in the last 50 years.

But it is not just their legal acumen that we celebrate today. We also acknowledge the tireless hours of research, the thoughtful deliberations, and the deep sense of responsibility that each judge has brought to the Supreme Court bench to ensure justice and fairness. It is the embodiment of the principles of justice and fairness that has made the Supreme Court in the 50 years a pillar of our democracy and the rule of law.

As we reflect upon the five decades of the Supreme Court's existence, we are filled with a profound sense of pride and gratitude. Since its establishment in 1973 the Supreme Court has been a steadfast pillar of our constitutional democracy, a guardian of the rule of law, and a beacon of hope for all those who seek justice. It's journey has been one marked by unwavering commitment to upholding justice, safeguarding the principles enshrined in our constitution, and preserving the democratic ideals that form the very bedrock of our society.

Throughout these fifty years, the Court has evolved, adapting to the changing needs of our nation and the world, but its core mission has remained constant - the fair and impartial administration of justice, ensuring that all citizens, regardless of background or status, receive fair and equal treatment under the law.

By deciding individual cases and settling disputes between parties, the Supreme Court has over the last fifty years of its existence developed our systems of law and built bodies of judicial decisions and moved the law, especially judge made law, in new directions.

Sitting for the greater part of the last half a century as the sole apex court it has not only fulfilled the standard dispute-resolution and law-development functions but has also, because its unique institutional position at the top of the judicial hierarchy, has provided leadership to other courts. Its decisions, and in particular, the language used in those decisions, resonate through the entire Zambian legal system.

The development of our country's judge made law has typically taken a 'top-down' approach designed to achieve coherence in the application of law by lower courts, with courts proceeding and deciding cases by analogy from case to case under the converted doctrines of judicial precedents and stare decisis. Moreover, members of the legal community – judges, lawyers, legal academics, students and even lay people – have often looked to the Supreme Court for general legal guidance.

The journey of the Supreme Court over these five decades has been marked by a steadfast commitment, unyielding dedication, and unwavering service to our nation. The Supreme Court has weathered many storms. The independence of its judges and the judiciary itself has been tried and tested in many instances over the fifty years. If an example were required, one would look no further than the incident which culminated in the undignified removal of Chief Justice James John Skinner when he refused to yield to the inappropriate demands that had been made to the Judiciary.

The men and women who have graced this court in the last 50 years navigated through challenging legal terrains. Yet, through it all, they remained resolute, ensuring that justice was administered impartially and without bias. They upheld the fundamental rights and liberties enshrined in our constitution, reinforcing the idea that no one is above the law.

It is a journey that has seen judges of remarkable intellect, wisdom, and integrity preside over some of the most complex legal matters in our history. For example, in cases arising from detentions and deprivation of private property made under the infamous Preservation of Public Security legislation; in sensitive treason cases, in various presidential and other election petitions, in politically explosive presidential parentage and citizenship cases, in complex criminal cases involving notorious criminals such as those of the Never Spoiler Kapenda fame, and in cases involving contentious legislation such as the Public Order Act, Judges of this Court, rose to the occasion and

interpreted the constitution, provided clarity on matters of profound national significance and set important precedents. Their decisions have shaped the very fabric of our society and have left a lasting impact on the trajectory of our laws.

It is said that the success of a Court is often measured in terms of its efficiency in disposing of its case load and in its use of public resources. The Supreme Court has a well-deserved reputation for efficiently managing and disposing of its case load whilst also being relatively “cheap to keep”. For example, in the last decade or so the Supreme Court developed a practice of hearing appeals in its Ndola session and writing judgments within those sessions. That practice rationalised the use of resources as much as it enhanced the courts overall performance. With that practice the court churned out up to 26 judgments per Ndola Session. This guarantee a minimum of 100 cases per year in addition to those delivered in other sessions.

Since the birth in 2016 of the Court of Appeal, much has changed. The institutional position of the Supreme Court has nudged it away from incremental development of the law based on the resolution of individual cases and the elaboration of general principles that can unify large areas of the law and provide meaningful guidance to the legal community and the general public.

Admittedly, the Court’s workload today has not been as heavy as it had been in the past. Apart from the legal institutional and policy changes that have brought this about, the court’s own hard work, which has seen it demolish the mountain of pending judgments, has contributed to this position. The court, however, still hears a fair share of appeals. Owing to the failure of the referendum, the Court still have a final say on breaches of the Bill of Rights.

The point is that the Court is now no longer concerned simply with legal causes of action personal to the parties before it. Although quantitatively its workload has reduced, qualitatively its responsibility has been enhanced, transforming it from the routine of resolving largely similar disputes and

applying the same established principles, to the more intellectually challenging and stimulating space of articulating judicial policy. The decisions of the Court should have enduring economic, and social effects of significance beyond the interests of the immediate parties to the proceedings. Further, this principled decision making by the Court will continue to set the tone and provide guidance in relation to the proper approach to the formulation and assessment of litigable issues.

Lest we forget, the purpose of this special session of the court is not just to toast to the Supreme Court and its judges and to extol fair matters of pride in the Court. It is equally to acknowledge that the Court's success in the last 50 years is by no means entirely attributable to the efforts of the Court and its judges alone. I must state, for the avoidance of doubt, that although the Supreme Court remains undoubtedly a pivotal institution in our country it now stands atop, alongside the Constitutional Court, in the hierarchical structure of courts with the lower courts forming the bedrock and foundation of this structure. The lower courts are the engine rooms of the judiciary, handling a vast array of cases and contributing significantly to the development of the law. Without these courts, the Supreme Court would be isolated, overwhelmed, and lacking the essential support it needs to effectively fulfill its role in the justice system.

Likewise, in the last 50 years the Court would not have flourished without the confidence and support of the broad cross section of legal professionals and other stakeholders, especially those who regularly participate in matters before the Court.

The Court has always been able to rely upon those members of the legal profession who regularly appear before it, not only to demonstrate the highest levels of professionalism, competence, diligence, candour and responsibility in the efficient resolution of the matter at hand, but also to assist in driving and delivering improvements to the efficiency and effectiveness of the process.

This includes, but extends beyond, the conduct of individual cases, to the formulation and implementation of new ideas and innovations over time.

The Law Association and its members, have been active in promoting this culture. The profession has been from time to time in the last five decades consulted about the evolution of the Court's practices. It embraced and ensured their smooth implementation.

Lawyers who have appeared before the Supreme Court in the last five decades have played a critical role in our legal system. They have brought important issues to the attention of the court, challenged established norms and the status quo, and helped shape the course of our nation's legal history. Some have even pushed the court as far as revisiting or clarifying some of its earlier decisions. We may joke and jest, but we deeply appreciate the dedication and expertise that lawyers bring to the Supreme Court through their craft

Yet the legal profession has not only assisted in improving the efficiency and effectiveness of the process; its members have also, in a most professional way, done much to ensure that the system works effectively even for those who are not legally represented. Matters that come before the Court often involve some unrepresented litigants, including private members of the community.

My experience is that such litigants are mainly people who are doing their best, on matters of grave concern to them, in an unfamiliar environment. Treating such people with respect and courtesy, rather than threshold criticism, doubt and dread, can do much to ensure not only that they can participate meaningfully in the process, but that the litigation progresses more smoothly for everyone involved.

We thus acknowledge the work lawyers who assist such litigants on a pro bono basis. We also acknowledge the legal practitioners who generally show appropriate respect and courtesy to self- represented litigants and also offer

desirable comity by providing such litigants with some assistance in understanding and participating in the process.

As we celebrate this historic milestone, we must recognize the invaluable contributions of non-judicial legal luminaries, including those in academia whose works have been useful in the court rooms in the last 50 years. They too are justice leaders. Their intellect, wisdom, and commitment to justice have left an indelible mark on our nation's legal history. Some of them have moved on to the great beyond and have passed on leadership to a new generation. And let us not forget the courtroom drama enthusiasts – you know, the lawyers who love to play to the gallery. They have probably rehearse their arguments in front of their bathroom mirrors more times than they would like to admit. They still nonetheless make a contribution to the robustness of the Court.

Looking ahead to the next 50 years, we find ourselves at the cusp of a new era, where innovation, technology and artificial intelligence will reshape the legal landscape. We must embrace these advancements to ensure greater efficiency and accessibility in delivering justice to all. Our commitment to empowering the next generation of justice leaders requires us to equip them with the tools and knowledge they need to navigate this evolving landscape successfully.

On the reverse side of things, I must also acknowledge the challenges the Court has faced over the years. The path has not always been smooth. The Court has received its fair share of criticism. Some of it justified and some of it, for the most part in fact, baseless and speculative.

As annoying as the embarrassment ensuing from some complainant's own unrestrained inclination to publicise unproven allegations against Judges may be, it is not in our scheme of things to stop court users from grumbling

even when they have no genuine issue to whine about. There could, however, be useful reforms around the complaint mechanism against judges so that it is not abused by losing parties or their proxies to unjustly malign Judges for doing their work, and that unfounded complaints which are malicious are not without sanction to their makers. What is equally required is for the lay public to be educated on court procedures and decision-making.

The generation of justice leaders of the last 50 years has done its best. The ideals of justice, fairness, and the rule of law remain as vital as ever. The next generation of judges will carry the torch forward, building upon the foundation laid by their predecessors.

In conclusion, as we celebrate this historic milestone, let us remember and honor the countless judges and adjudicators who have dedicated their lives to the pursuit of justice within the ranks of our court system. Some of those that have since retired are present here today. I already mentioned retired Chief Justices Silungwe and Sakala as well as retired Supreme Court Judge Florence Mumba. Their contributions to the Court over many years and their presence here today are a testament to the strength and resilience of our judicial system. We owe them a debt of gratitude for their service to our great nation.

Together, let us march towards a future where justice reigns supreme, where the rule of law is inviolable, and where our judiciary continues to shine as a beacon of hope and inspiration for generations to come.

Thank you, and may justice forever prevail.