



REPUBLIC OF ZAMBIA

THE JUDICIARY

SPEECH BY THE HON. CHIEF JUSTICE

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AT THE INTERACTIVE SESSION BETWEEN

THE JUDICIARY

AND

TRADITIONAL LEADERS

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SALUTATIONS

I welcome you all our traditional, political and judicial leaders present here today and wish to recognise you in your respective capacities. I also welcome all other participants to this very important meeting.

This is a consultative meeting called by the Judiciary to discuss the attempt to find mutually workable solutions to some operational challenges that affect our institutions, especially the Judiciary and the Royal Establishments. Yet, it is also important that relevant Ministries such as that responsible for traditional affairs, are also represented.

Our vision in the Judiciary is to transform the institution into one that will provide effective and efficient justice delivery to all our people across the country. Access to justice is a much-acclaimed value which has unsurprisingly found expression in the Sustainable Development Goals.

We believe that one way of entrenching access to justice in our country is through engagements and interactions with all stakeholders with a view to addressing the deficits identified and ironing out the creases in the justice delivery system.

We are fully cognisant of the hybrid justice system that obtains in the country. We have on one hand the less formal traditional methods of dispute resolution which has from time immemorial been administered by their Royal Highnesses and those to whom they delegate that authority. On the other hand, we have the more formal method of dispute resolution, administered by courts established by the Constitution. These two systems both dispense justice and they complement each other in this regard.

As both systems save the same people, the Zambia people, some overlap and inter-section is inevitable. It also follows that from time to time, there might be some conflict, friction or mere misunderstanding as the two systems dispense justice side by side. The convergence point in this case happens to be at the lower Judiciary, principally at the level of Local Courts and Magistrates Courts.

We appreciate that the relationship between the Judiciary and the traditional authorities must be symbiotic but experience has taught us that it is at times tumultuous and hence the reason we are here.

This interactive meeting was, therefore, convened so that the Judiciary and our traditional leaders who administer the two systems of justice, get to interact face to face and present their observations and concerns which hinder the effective delivery of justice. The meeting is also intended to make suggestions/recommendations on how improvements can be made in the law and practice so as to make the two systems of justice co-exist peacefully with enhanced efficiency.

We took the liberty to invite critical Ministries to be part of this dialogue as they are instrumental in the delivery of justice and the formulation of appropriate policy. Some of them also frequently interact with traditional leaders or are in charge of their affairs from the perspective of government.

At this juncture, allow me to thank all of you present at this meeting and to appreciate all who have played a role in organizing this historic event which is being hosted under the auspices of my advisory

committee on court operations. This is the first meeting of its kind and unsurprisingly, we intend to attach seriousness to it as it will reshape our justice dispensation landscape going forward.

We are sincerely grateful for the House of Chiefs for sponsoring our traditional leaders to come and be part of this interactive meeting. We also took the liberty to invite GIZ and the Danish Institute on Human Rights (DIHR) as these are among the cooperating partners that have constantly supported the Judiciary especially in local courts justice administration.

My remarks/presentation, will be in parts, so as to set the tone for other speakers (discussants) to make their contributions. After the remarks, we shall open the floor for a plenary session where everyone will be free to deliberate. We hope before departing this room, we will come up with recommendations/action points.

Basis of Judicial Authority and its Relationship with Traditional Authorities

The Judiciary is an arm of government responsible for the day to day administration of justice in Zambia. It consists of the court system, established under Part VIII of the Constitution of Zambia, as amended by Act No. 2 of 2016. The principles of judicial authority

are enshrined in Article 118 of the Constitution in the following words:

118. (1) The judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.

(2) In exercising judicial authority, the courts shall be guided by the following principles:

(a) justice shall be done to all, without discrimination;

(b) justice shall not be delayed;

(c) adequate compensation shall be awarded, where payable;

(d) alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3);

(e) justice shall be administered without undue regard to procedural technicalities; and

(f) the values and principles of this Constitution shall be protected and promoted.

(3) Traditional dispute resolution mechanisms shall

Not -

(a) contravene the Bill of Rights;

(b) be inconsistent with other provisions of this Constitution or other written law; or

(c) be repugnant to justice and morality.

Article 119 vests judicial authority and performance of judicial function in the courts. It provides:

- 119. (1) Judicial authority vests in the courts and shall be exercised by the courts in accordance with this Constitution and other laws.**
- (2) The courts shall perform the following judicial functions:**
- (a) hear civil and criminal matters; and**
 - (b) hear matters relating to, and in respect of, this Constitution.**
- (3) Except as otherwise provided in this Constitution, other law or as ordered by a court, the proceedings of a court shall be in public.**

The above quoted Articles of the Constitution form the basis of judicial authority and this is exercised, on behalf of the people of Zambia, by the Judiciary.

The Constitution of course, does recognise traditional dispute resolution mechanisms which are not in conflict with written law or repugnant to justice and morality.

The Court system comprises the superior courts (Supreme Court, Constitutional Court; Court of Appeal; and High Court) and inferior courts (Subordinate Courts; Small Claims Courts; Local Courts and

other courts as may be prescribed) (Article 120(1)). The processes and procedures for all the above courts are prescribed by the various Acts constituting the courts and subsidiary legislation (Rules and Regulations).

The Courts have the mandate to apply the laws of Zambia. Article 7 of the Constitution elaborates on what comprises laws of Zambia as follows:

7. The Laws of Zambia consist of—

- (a) this Constitution;**
- (b) laws enacted by Parliament;**
- (c) statutory instruments;**
- (d) Zambian customary law which is consistent with this Constitution; and**
- (e) the laws and statutes which apply or extend to Zambia, as prescribed.**

The laws above stated are what the Judiciary follows in discharging its Constitutional mandate.

May I at this stage, make one point very clear. This is that if some among us harbour the notion that local courts fall under traditional authorities or traditional dispute resolution mechanisms, that is a serious misconception. Local courts fall under the judicial hierarchy

and are distinguishable from the traditional courts or traditional dispute resolution mechanisms administered by traditional authorities. Local Courts are regulated by the Local Courts Act, Chapter 29 of the Laws of Zambia.

It is trite that local courts administer predominantly African customary law (which is not repugnant to natural justice, morality or incompatible with any written law) but also have jurisdiction conferred on them under written laws (section 12, Local Courts Act).

Having said all these things let me state immediately that in the discharge of our duties as courts, we enjoy functional independence. This is enshrined in Article 122 of the Constitution which provides that:

122. (1) In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.

(2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer.

(3) The Judiciary shall not, in the performance of its administrative functions and management of its financial

affairs, be subject to the control or direction of a person or an authority.

(4) A person and a person holding a public office shall protect the independence, dignity and effectiveness of the Judiciary.

(5) The office of a judge or judicial officer shall not be abolished while there is a substantive holder of the office.

This provision has very serious ramifications. It prohibits anyone, including our traditional authorities, or indeed any government authority, from interfering in the execution of judicial functions. We call upon all of us here and indeed the entire nation to respect the sanctity of judicial independence/autonomy.

Section 10 of the Chiefs Act, Chapter 287 of the Laws of Zambia, spells out the functions of chiefs (and deputy chiefs) as follows:

10. (1) Subject to the provisions of this section, a Chief shall discharge-

(a) the traditional functions of his office under African customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality; and

(b) such functions as may be conferred or imposed upon

him by this Act or by or under any other written law.

We expect, as a Judiciary that the Chiefs are properly mandated by law to discharge their traditional authority and leave judicial functions to the courts.

In the day to day management of the Judiciary, the general oversight is provided by the office of the Chief Justice. Article 136 creates the office of the Chief Justice and gives it powers in the following manner:

- 136. (1) There shall be a Chief Justice who is the head of the Judiciary.**
- (2) The Chief Justice shall—**
- (a) be responsible for the administration of the Judiciary;**
 - (c) ensure that a judge and judicial officer perform the judicial function with dignity, propriety and integrity;**
 - (d) establish procedures to ensure that a judge and judicial officer independently exercise judicial authority in accordance with the law;**
 - (e) ensure that a judge and judicial officer perform the judicial function without fear, favour or bias; and**
 - (e) make rules and give directions necessary for the efficient and effective administration of the Judiciary.**

It follows that any grievance, be it from the general public or from adjudicators, have to be addressed by my office. Of course, I have the Deputy Chief Justice, heads of various courts and administrative staff that help me in the ensuring that the Judiciary operates smoothly. I must also mention that we have oversight institutions over our conduct such as the Judicial Complaints Commission and other state institutions. I am highlighting all this so that we all have a common understanding that there are designated channels through which even a grievance against a magistrate or judge can be addressed which does not amount to interfering with judicial autonomy unduly.

Common Problems encountered by the Local Courts from Traditional Leaders/Authorities

As I have intimated already, the courts which frequently interfaces with the traditional authorities are the local courts. In their day to day duties, the local courts, which are spread across the country and have presence even in the remotest and inaccessible parts, in some cases do report interference from traditional leaders in their

operations. Allow be to highlight some commonly cited examples of interference by our traditional leaders:

- 1) Some traditional leaders summon magistrates and support staff and issue threats to them. They dictate which cases they must deal with which are not dealt with by their traditional courts and they tell their subjects to take cases to the traditional courts and not local courts;
- 2) Some traditional leaders summon local court staff and demand that they enforce the decisions made by the traditional courts;
- 3) It is rampant for traditional leaders to interfere in cases that are active before the local courts and in some cases even instigate their subjects not to take cases to courts or not to comply with the court's decisions or ask them to withdraw cases from courts and instead have them resolved in traditional courts;
- 4) Some traditional leaders have instructed local courts to transfer cases to the traditional courts;

- 5) When decisions are not made in their favour, some traditional leaders rise against the court staff. In some cases, when traditional leaders have decided, they do not want the same cases to be subject of court proceedings as they deem their decisions final;
- 6) A good number of traditional leaders' demand (issue directives) that local courts should not handle customary/traditional land disputes as the same are a preserve of the traditional authorities as custodians of traditional land. Some also do not want the local courts to handle cases involving witchcraft accusations;
- 7) Chiefs who are former judicial employees sometimes question/review decisions coming out of the local courts and engage litigants over the court outcomes thereby undermining the court's authority;
- 8) Chiefdoms which have traditional courts do not recognise the local court's jurisdiction *per se* and only allow a few cases to be adjudicated upon by the local courts;

- 9) In extreme cases, local court magistrates and support staff are chased from their stations by the chiefs and headmen;
- 10) Traditional leaders have in some instances encroached the land (or part of it) belonging to the courts (judiciary) and have sold it. Sometimes it is the local councils that interfere with the judiciary land;
- 11) Some traditional leaders do not accept court officers who were not recruited from amongst their subjects; and
- 12) There have been rampant complaints of witchcraft threats on court officers in a number of places.

We would like the traditional leaders to comment on some of these concerns.

Amendments to the Local Courts Act, Chapter 29 and the Intestate Succession Act, Chapter 59 of the Laws of Zambia

We have realized through the engagements with our judicial staff during our visits that it is eminent to amend the Local Courts Act and the Intestate Succession Act to enable the majority of our poor citizens and those in far flung areas easily access cheaper and quicker justice which the Local Courts provide. We ask the Ministry

of Justice to help expedite the review of the jurisdictional limits in intestate cases. Overall, amongst the revisions we are working on, are:

- i) Enhancing the jurisdiction of local courts in civil matters;
- ii) Increasing the jurisdiction of local courts in intestate matters from fifty thousand kwacha (unrebased) (K50 rebased) (*section 43(2) of the Intestate Succession Act*).

The Judiciary is alive to the huge expense most of our people are being put to by travelling long distances to obtain letters of administration from High Courts which are in provincial centres. Some estates are very little but due to jurisdictional limit by the local courts they have had no choice. Some have abandoned claims which have less value than the cost to pursue the money. Most institutions have also been rejecting the letters of administration issued by the local courts.

- iii) Compensation to be paid to the winning party in the local courts will be done in the presence of both parties in open court. This is currently a policy directive but will now be enshrined in the law.

Settlement of Succession Disputes

One other area the Judiciary wishes to ask the traditional authorities' intervention is in chieftainship succession disputes. The superior courts which deal with these cases do not find joy in dealing with them. These cases do not usually have legal issues for the court to determine but based on facts. The Judiciary, requests through this gathering, whether the House of Chiefs could start resolving succession wrangles and such cases should only come to the courts on questions of procedure or compliance with the rules of natural justice. If this issue can be settled by the House of Chiefs, it would ameliorate the problems associated with recognition of a chief under section 3 of the Chiefs Act, Chapter 287 of the Laws of Zambia.

Conclusion

I invite all of us to freely discuss and debate the various issues that I have raised and those to be raised by others during the deliberations. The ultimate goal is to better the judicial landscape and this is one of our initiatives to freely and openly engage with all stakeholders in the justice system. Traditional leaders are very critical in fostering law and order and their voice must be heard as they hear us.

I thank you.