REPUBLIC OF ZAMBIA

THE JUDICIARY

KEYNOTE ADDRESS BY

HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE

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AT THE LAUNCH OF

THE JUDICIARY COMMUNICATIONS STRATEGY

AND THE LAUNCH OF

THE MEDIATION SETTLEMENT WEEK

VENUE: **SUPREME COURT GROUNDS**

DATE: **THURSDAY 8TH AUGUST 2024**

SALUTATIONS

It is an honour to welcome you all to our Judiciary Open Day, a day dedicated to bridging the gap between the Judiciary and the people we serve. Today, we open our doors not only to showcase the work we do but to engage with the public, answer your questions, and deepen your understanding of the justice system. Beyond this we have also gather here this morning to witness the official launch of the Judiciary Communications Strategy and the launch of the Mediation Settlement Week.

As part of the Judiciary's historical progress, we have introduced a Communications Strategy. This development is significant because it addresses some debates that have been going on around the world regarding judges' external communication.

The myths surrounding the judicial process make it all too easy for us to remain comfortable with being perceived as the opaque arm of government. As long as we appear to be acting like the mythical figures that our legal tradition has created, we may not fully communicate what our role in society is. The myth that the Judiciary

must not be heard is unfortunately terribly confining. It forces us to maintain an absurd legal fiction: We are forced to pretend that we hold no views on any issues, that we have no distinct judicial philosophy, no broad vision of social justice, on the one hand, or no obsessively strong attachment to the issues that are constantly affecting the society we live in.

I believe we sacrifice too much in our attempts to preserve the rule of judicial silence. Our very own private judicial gag rule. More is to be gained, both for the Judiciary and for our democracy, if we as an institution engage in vigorous and unfettered communication with the public.

While judges should refrain from discussing active cases, especially in relation to high-profile trials, and other sensitive matters there is a consensus emerging among legal professionals that the Judiciary should not be shackled so much so that the public is left to wonder what its role is.

While we are a collection of independent legal minds, we collectively constitute the Judiciary. As an institution, the Judiciary should not be subject to the same communication restrictions as individual

judges. It is our duty as an institution to educate not only the legal community but also the broader public on matters within our expertise. The launch of the Communications Strategy today is exciting as one of its purposes is to facilitates this educational role.

In today's era, where misinformation proliferates swiftly, proactive communication is essential. By providing accurate and timely information, we can counter false narratives and ensure that the truth prevails. This becomes especially critical in high-profile and otherwise sensitive cases, where incomplete or inaccurate information can sway public opinion.

It is our expectation that this communication strategy will actively educate the public about the Judiciary's role in society. Public educational campaigns can explain the significance of judicial independence, the separation of powers, and the fundamental rights that our courts exist to protect. When the public is well informed, they are better positioned to comprehend and actively support the Judiciary's endeavours. Rather than being passive observers, they become our partners in the pursuit of justice.

As an integral part of our communication strategy, we must prioritise enhancing access to information. This entails not only making information about our processes and services readily available but also ensuring its comprehensibility and accessibility to all, regardless of their background or educational level.

I am aware that we have developed several service charters in the past. This has been achieved at great expense by our institution. Why don't we take it a step further and ensure that these service charters are displayed across our registries? This would ensure that the simplified court processes and procedures are brought to the attention of Court users when they visit any of our registries. This should form part of our communications strategy.

To achieve effective communication, we shall also make use of other user-friendly platforms such as our official website. Our last Policy Committee meeting, agreed to open up official social media platforms to allow our institution to effectively communicate with our communities. These must form part of our essential tools for communication. By communicating clearly about various issues such as the availability of legal aid or general court procedures we

empower the public to seek justice with a clear understanding of what they want to achieve.

Furthermore, we as an institution have an obligation to be transparent and receptive to public scrutiny, like all other institutions and persons in a democratic society. Opening our courts to public inspection and actively participating in the exchange of information are essential for a functioning democracy. However, we must exercise caution to avoid prejudging specific cases while contributing meaningfully to ongoing societal discussions.

The critical point is that in our dynamic and rapidly evolving society, characterised by the free flow of information and heightened public expectations regarding transparency and accountability, the Judiciary can no longer remain silent. We must harness the power of effective communication to uphold the integrity of our institution, foster trust, and ensure that justice is not only administered but also perceived to be administered.

A robust communication strategy is indispensable for enhancing transparency and accountability within the Judiciary. Our decisions and procedures and processes must be comprehensible to the public

we serve. By openly communicating about our work, we demystify the legal system, making it more accessible to all. Transparency is not merely a public relations exercise; it is a fundamental pillar of democratic governance.

Through clear and consistent communication, we can demonstrate our unwavering commitment to impartiality and fairness. We must emphasise that every decision is grounded in the rule of law, uninfluenced by external pressures or biases. By doing so, we bolster public confidence in the judiciary as the custodian of justice.

Public trust serves as the bedrock of our authority as an independent Judiciary. Without it, our judgments would lack legitimacy, and the very fabric of the rule of law would be compromised. A thoughtfully crafted communication strategy like the one we are launching today enables us to engage meaningfully with the public, explaining our decisions, actions and initiatives while addressing any misconceptions or concerns that may arise.

Effective communication also plays a pivotal role in maintaining the internal integrity of the Judiciary. It ensures that everyone within the institution, from adjudicators to court staff, fully understands

our mission, core values, and standards. This internal cohesion is vital for the efficient administration of justice.

Furthermore, strategic communication allows us to advocate for necessary legal reforms that bolster the independence and effectiveness of the Judiciary. Engaging with policymakers, the media, and the public enables us to make a compelling case for strengthening the rule of law and safeguarding the Judiciary from undue influence. In my opinion, the benefits of openness far outweigh the costs. Robust debate and the unfettered exchange of ideas and information play a central role in our democracy and in our judicial system; the legitimacy of both depend upon honesty and candour. It simply does not make sense for us, vested with the duty of upholding these worthy ideals, to refuse to communicate to the public about the things that we are engaging in or the initiatives that we have put in place.

Just as our democracy would benefit from the perspectives of our institution, so too would the judiciary benefit from the perspectives of the people. We should open ourselves and our courts to the public, for it is such openness, I believe, that will ultimately make us better

judges and that will assure the legitimacy of the judicial system in the eyes of the Zambian people.

Our attitudes about judicial silence lead to a lack of openness in other areas. Because we are often isolated from public debate, we are disturbed when others criticise us. We tend to forget that the cases we are deciding have broader implications outside the courts, that the cases being litigated often represent small battles in a larger war that the parties are fighting on a far broader front. The people should be allowed to criticise us openly when they believe that such criticism is deserved.

Much of the criticism we receive, most of the adjudicators will agree with me, relates to delayed judgments and rulings. Initiatives such as the mediation settlement week are aimed at going some way in alleviating the backlog challenges that we have been experiencing for some time now.

The mediation settlement week should not be seen as a Judiciary ritual where judges identify several cases that they find irritating or difficult to deal with and send them to mediation in the hope that they can be resolved. This kind of outlook on this very important

initiative should change if we are to achieve any level of success with mediation.

However, in order for our society to reap the benefits of mediation, many lawyers must come to understand mediation and a significant number must develop an ability and willingness to mediate a variety of matters that are currently pushed through the litigation ring. We must inculcate a belief amongst ourselves that litigation is not always the best way to go. Abraham Lincoln once had this to say to lawyers: "Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser: in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good person".

It has often been contended that lawyers can sometimes impede the success of mediation. While this may not hold true for the majority of legal practitioners, it remains a valid observation for some. The challenge arises when lawyers enter the mediation arena, bringing with them their adversarial legal culture. Lawyers often prioritise facts and certainty, leading to legal solutions for disputes. In

contrast, mediation emphasises emotions, seeking resolutions through the exploration of feelings and perceptions.

Therefore, for lawyers to effectively serve as mediators or participate in mediation sessions, it is essential to reduce the reliance on traditional legal methods and solutions. Some lawyers may perceive a conflict between their duty to their client and the need to facilitate an authentic mediation process. Lawyers who fail to recognize that their role in mediation is not one of advocacy can become a significant obstacle to the mediation process.

Court-annexed mediation is by its nature conducted in the shadow of litigation with parties being very conscious of their rights and the merits of their case at trial and this may inhibit their options for resolving the dispute. It is the duty of a lawyer whose matter has been sent to mediation to assist the client identify issues and develop options for resolution.

I am alive to the fact that not all lawyers should be put into the same basket. While some lawyers see themselves as gladiators, others have a genuine settlement focus, deriving possibly from their training and experience and outlook in life, from how they perceive themselves

or their role as a lawyer or from their psychological makeup and personality. Just as one lawyer may perceive himself or herself as a fighter, another may see themselves as a problem solver and perceive their role as being to help the client through the dispute with minimum possible damage.

Mediation can only produce an outcome and resolve the dispute if the parties reach an agreement. There is no magic wand. There is of necessity an element of compromise in achieving an outcome. A result usually depends on one or other or both parties shifting ground and where parties are represented the lawyer has a critical role in this process.

Lawyers can actively assist in achieving a resolution by preparing the client for mediation, explaining the process; preparing a best-and worst-case scenario and explaining the dynamics of mediation to the client. This also involves preparing the client adequately for the idea of compromise. By trying to understand what lies behind the dispute and by exploring what the client needs to resolve the dispute as distinct from what the client says that he or she wants.

One Scholar, Riskin refers to the lawyers "philosophical map" which he says differs radically from that used by a mediator. He says that what appears on the map is determined largely by the power of two assumptions about matters that lawyers handle: Firstly, that disputants are adversaries – that is, if one wins, the other must lose; and secondly that disputes may be resolved through application of some general rule of law. These assumptions he says are plainly polar opposites of those which underlie mediation. With Mediation, the assumption is that all parties can benefit through a creative solution to which each agrees; and secondly that the situation is unique and therefore not to be governed by any general principle except to the extent that the parties accept it.

So much has been said about the role that the lawyers play in the arbitration process, adjudicators also have a distinct role to play. As I noted earlier, adjudicators should not send matters to mediation just for the sake of it. They must assess that the matters being earmarked for mediation are appropriate for that mode of settlement. Not all cases before an adjudicator may be amenable to mediation. Therefore, all adjudicators must take time to read through all cases

before they form the opinion that the matter is suitable for settlement through mediation.

Going forward, I hope all parties involved in the mediation process should develop a positive attitude towards the process so that the process is a success. Judges, lawyers and the parties themselves all have a role to play in order for mediation to be successful. I sincerely hope that we do not only think about mediation because it is the mediation settlement week. Whatever time of the year, matters suitable for mediation must be given a chance to be settled at mediation.

Allow me at this point to officially launch the Mediation Settlement Week and Our Open Day!

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