

SPEECH BY THE HONOURABLE MR JUSTICE G.M. CHIWESHE, JUDGE PRESIDENT

OF THE HIGH COURT OF ZIMBABWE AT THE OPENING OF THE 2012 LEGAL YEAR,

BULAWAYO, 9 JANUARY 2012

1. INTRODUCTION

It is the time honoured tradition of the High Court of Zimbabwe to make a statement on the occasion of the opening of the legal year. It is at this time that the judiciary takes time to review its work during the past year, positions itself for the current year and projects its dreams for the coming years. In so doing, the judiciary will be giving out indicators of its relevance to the society that it serves and giving the nation an opportunity to also measure the efficiency of the justice delivery system.

Today we gather here once again to mark the opening of the legal year 2012. The tradition has been, on such occasions, to focus in the main on the operations and activities of the superior courts. This year I have seen it prudent to have a slightly different slant by highlighting some major activities carried out by the Judicial Service Commission during the year 2011. My reasons for so doing are obvious because, unlike in the past, we in the judiciary now fall under one administrative authority, the Judicial Service Commission, chaired by the Chief Justice and supported by a secretariat.

2. JUDICIAL SERVICE COMMISSION

Most of you are aware that the Judicial Service Act was brought into operation on 18 June 2010, but what may not be common knowledge is that it was not until January 2011 that the judiciary, through the Judicial Service Commission gained control of its funds. Prior to that, the budget fell under the Ministry of Justice and Legal Affairs whose priorities did not always coincide with those of the judiciary.

I am glad to report that in the short period that the Judicial Service Commission has had control of the judiciary's budget we have witnessed a marked improvement in our operations. The control of our budget has enabled us to set our own priorities in terms of what activities we believe will enhance our operations, and, ultimately have a positive impact on justice delivery. For example, the supply of basics such as stationery and office provisions has dramatically improved. Magisterial circuit courts that had been abandoned due to unavailability of vehicles and fuel have now been resuscitated. In the year under review, in addition to working on improving court operations, the Judicial Service Commission also worked on other important projects aimed at bringing into being a more efficient and accountable judiciary. Three such projects come to mind, namely, (a) the development of a five-year strategic plan, (b) the

adoption of an appropriate organizational structure for the Judicial Service Commission Secretariat and (c) the finalization of a written code of ethics for Judges and Presidents of the special courts.

- **The Strategic Planning Exercise**

With the coming into force of the Judicial Service Act in 2010, a unified judiciary under the management of the Judicial Service Commission was established, consisting of the Supreme Court, the High Court, the Labour Court, the Administrative Court and the Magistrates Court. Faced with this new development and the fact that for the first time in the history of our country, a unitary judiciary had been born, the Judicial Service Commission saw it prudent to initiate a strategic planning process aimed at developing a five-year strategic plan for the Judicial Service Commission.

The expanded mandate of the Judicial Service Commission necessarily entailed that the Judicial Service Commission was immediately seized with the issue of how best it could discharge its new responsibilities. The Commission was further seized with the issue of how best to define its vision and core values – to this end the Commission embarked on a consultative process, involving all stakeholders.

An intensive eight-month strategic planning process was conducted. It involved extensive consultations with not only internal stakeholders but also external stakeholders, thus ensuring their participation, securing their commitment and building consensus, both within and outside the Judicial Service, around the importance of an independent, credible and effective judiciary.

In November 2011, with the active participation of the judiciary, a five-year strategic plan for the Judicial Service Commission was finalized and will soon be published.

- **Judicial Service Commission Organizational Structure**

The Commission considered the nature and size of an organizational structure for the Secretariat that is capable of not only supporting the strategic activities of the Judicial Service Commission but also providing administrative support to the judiciary.

This resulted in a lean and flat structure being agreed on, that will ensure quick decision turn-around time in the interest of speed and efficiency. A lean and cost effective structure was adopted capable of speedy and efficient delivery.

- **Judicial Code of Ethics for Zimbabwe**

The traditional belief that existed amongst judiciaries was that there existed an unwritten code of ethics that governed the conduct of judges, which presumably was known by the judges themselves. This was justified on that basis that in relation to their judicial functions, judges are subject to a higher degree of accountability and transparency than any other public officer. The judges do their work in public; they must give reasons for their decisions and these are examined and analyzed by appellate courts. Moreover, their decisions and conduct in court are subject to public scrutiny and to criticism in the press and other media. Judges are also subject to removal from office, admittedly by a cumbersome process, for misbehavior or incapacity.

The 1990s ushered in new thinking amongst most judiciaries in the world who now saw the importance of having written codes of ethics that would guide and regulate judicial conduct. After several years of grappling with the idea of developing a written code of ethics, the judiciary in Zimbabwe, with the facilitation of the Judicial Service Commission, has finalized a code of ethics which will soon be published in the form of a statutory

instrument. Apart from spelling out the values and standards of judicial conduct, the code also introduces a more formal complaints procedure in relation to Judges and Presidents of special courts. This code of ethics applies to all constitutionally appointed judicial officers.

As a transitional measure, magistrates and the support staff remain governed by the Public Service Regulations, pending the development by the Commission of its own institution specific service regulations.

I will now give an overview of the operations of the Bulawayo High Court during the year 2011.

- **Workload**

The volume of work continued to increase. Ideally the complement of Judges at the High Court in Bulawayo is a minimum of five (5). In 2011 the complement has been four (4) judges. This development (which is fortunately being addressed) has negatively impacted on the operations of the High Court in Bulawayo. Further, the structure of the High Court building does not allow much room for expansion. This building is ancient

and can only produce three court rooms. In short, at most we can only have three courts sitting simultaneously. On some days, the Judges have to share a courtroom i.e. one sitting only after the other has adjourned.

Further, the High Court has insufficient recording facilities.

- **Measures taken**

In order to address the above problems, the number of Judges has been increased to five (5) from the beginning of this year. The Ministry of Construction has been consulted with a view of creating a fourth court room in the building.

Bail applications are being held in Judges' chambers. A more flexible method of setting down of opposed matters is being used. Individual Judges set the matters on days when courtrooms are available. There is in place a deliberate policy to encourage litigants to settle out of court and avoid unnecessary litigation.

3. STATISTICS

In 2011 there was a marked increase in the workload. Compared to 2010, the civil process issued increased by 945. Ordinary chamber applications rose from 487 in 2010 to 686 in 2011. Urgent chamber applications rose from 239 in

2010 to 419 in 2011. Default judgments rose from 336 in 2010 to 754 in 2011.

Bail applications increased from 185 in 2010 to 319 in 2011.

To give a fuller picture, I propose to give the following statistics for the period 2 January 2011 to 30 November 2011.

3.1 Civil litigation figures

	Received	Cleared	Rate of clearance
Divorce	406	206	51%
Chamber Applications	1 105	779	71%
Default Judgments	353	259	73%
Court Applications	357	144	40%
Civil Trials	47	14	30%
Civil Appeals	128	20	16 %

The rate of clearance of civil cases is satisfactory. However, there is concern over the clearance of civil appeals. Although a total of 128 notices of appeal were received, only 22 records were ready for set down. There is a problem with transcription of records by the lower courts. Further, the appellants are not prosecuting their appeals as expected. An added problem is the mobility of litigants which makes the service of set down notices very difficulty.

3.1.1 Jurisdiction of lower courts

The current level of the jurisdiction of the Magistrates' Courts which is currently pegged at \$2 000 appears to be very low. Due to this low figure the workload at the High Court has unduly been increased. Therefore, there is need to urgently review the civil jurisdiction of the magistrates' courts.

3.2 Criminal matters

	Received	Cleared	Rate
<u>Criminal Trials:</u>			
Bulawayo	72	41	57%
Gweru Circuit	37	26	70%
Hwange Circuit	35	23	66%
Bail Applications	319	251	79%
Reviews	1 994	1 380	69%
Criminal Appeals	370	128	35%
Transfer for sentence	2	2	100%

As far as criminal appeals are concerned, there are challenges in the transcription of records by the lower courts as evidenced by the fact that out of

the 370 notices of appeals received, only 143 records were ready for set down. Further, it is noted with concern that only about a quarter of the criminal appeals were prosecuted. A disturbing number of 87 appeals were dismissed by the Registrar for want of prosecution. It seems that quite a number of appeals were filed for the purpose of securing bail for the appellants. The Registrar of this Court, the Attorney General's Office and the police are in consultation to ensure that these appeals are genuine and are prosecuted as expected. There should be no misuse and abuse of the appeal process.

There is concern over long outstanding partly heard criminal matters. Admittedly, such cases are few. It is, however, necessary that a solution be found for their finalization as some of the accused persons have been in custody for lengthy periods. At present our court roll can only accommodate an average of 22 criminal cases per term i.e 66 criminal cases per year. The Attorney General's office received around 131 dockets in 2010 and 96 in 2011. Needless to say a backlog is created every year. We have only one criminal court sitting per day (Tuesdays to Fridays). If we had sufficient court rooms, we would have at least two criminal courts sitting per day. As a substantial number of the criminal cases emanate from Matabeleland South, the alternative option is the opening of a

High Court circuit court in Matabeleland South. This is an option that has to be seriously considered.

4. **STAFF SHORTAGES**

4.1 The Deputy Registrar has a disturbing staff deficit which creates problems in the smooth running of the court. Of particular concern is the High Court library which has operated for almost two years without a librarian. Happily the Judicial Service Commission is actively attending to these and other shortfalls.

4.2 The Bulawayo High Court has operated without a switchboard for almost five years. This position is untenable as it makes both internal and external communication very difficult and expensive.

4.3 **Appointments**

The year 2011 also saw the appointment of three new judges to the High Court Bench. We welcome Justices Makonese,imba-Dube and Mwayera to the High Court Bench. I wish to formally welcome Mr Justice Misheck Cheda and Mr Justice Makonese to the Bulawayo Bench.

4.4 **Relationships with other stakeholders**

The judiciary continues to enjoy cordial relations with other stakeholders in the justice delivery system such as the Attorney General's office, the Police

and the Prison Service. Our good relationship with the Law Society of Zimbabwe also continues to be reinforced. Last year we again held another joint indaba between the profession and the judiciary where matters of mutual concern were discussed.

Finally, I wish to acknowledge the financial support afforded to the judiciary by some of our co-operating partners, in particular the Danish Government and the United Nations Development Programme – we look forward to their continued support.

5. **CONCLUSION**

Once again I thank you all for attending this opening ceremony. I now declare the 2012 legal year officially opened. You are all invited to a reception in Court B. The Deputy Registrar/Master will furnish you with further details. Court adjourned.