

OFFICIAL OPENING OF THE LEGAL YEAR 2010
S P E E C H D E L I V E R E D B Y
THE HONOURABLE MRS. JUSTICE RITA MAKARAU
JUDGE PRESIDENT
HIGH COURT OF ZIMBABWE

Mr Anderson,

The Minister Of Justice and legal Affairs,
The Mayor of the City of Harare.

Distinguished invited guests.
Ladies and Gentleman.

We are gathered here once again to mark the beginning of the legal year for the year 2010.

When we last gathered here, the Government of National Unity was not yet a reality and I recall us in the judiciary using the occasion of the official opening of the legal year 2009 to add our voice to all those who were urging the three principals to come together and work together for the good of the people of Zimbabwe, which they did the following month. We do not for once believe that our voice was heard at all beyond this courtroom but we are glad that the Government of National Unity is now a reality for it has ushered in a revitalized era for us in the judiciary and we believe for the rest of the nation.

We were also excited to note that in Article XI of the Global Political Agreement that created the Government of National Unity, the three parties

reinstated a fundamental principal that guides and guards our democracy, that it is the duty of all political parties and individuals to respect the Constitution and other laws of the land and to adhere to the principles of the rule of law.

We are heartened to know that our interpretation of the Constitution and the laws of the land will be respected by all parties to the agreement and by all individuals. We expect the three political parties to lead by example.

We are also confident that as part of adhering to the principles of the rule of law, the three political parties and the Government of National Unity will do all that is in their respective powers to uphold the principles of the independence of the judiciary for there can be no rule of law without an independent judiciary. We wait eagerly to be informed of or to be consulted on the programs if any, that the Government of National Unity will unfold to give content and expression to the provisions of this Article.

2009 UNDER REVIEW.

GENERALLY

THE YEAR 2009 saw the introduction of multicurrency and with that, the charging of court fees at meaningful levels. The results of the income generated in this manner have included a marked improvement in all our operations as we have been able to provide for most of the basic needs of the courts. The transportation of accused persons and witnesses in criminal trials also improved generally and we saw a much improved take-off rate in criminal trials in 2009 than in the previous two years. Payment of witness expenses also improved considerably and in 2009 we hardly received reports of prosecutors having to fork out their own monies to feed state witnesses, an incidence that had uncomfortably become commonplace in 2008.

CRIMINAL TRIALS.

For those interested in statistics, 115 criminal trials were set down before the High Court in Harare and 100 of these were completed. Some of the remaining ten cases, like the much publicized *S v Bennet* matter have been rolled over for continuation this term.

In Bulawayo, a total of 74 cases were set down during the course of the year and 31 of these were completed.

Thus the two courts had a total of 191 of which 131 cases were completed.

The above statistics do not include the additional criminal cases that were set down and completed at each of the four circuit courts, namely, Mutare, Masvingo, Gweru and Hwange.

While we note with sonic satisfaction that the take-off and completion rates in criminal trials improved noticeably during the course of 2009. for which we must thank the office of the Attorney General, we are still a long way from being efficient in our prosecution of crime. Our measure of success must not lie solely in how many cases we complete per year but rather in how short a period an accused person waits before he or she is put on trial. We have heard of and have been horrified by delays of up to nineteen years in some jurisdictions.

Our own cause list for the first term of 2010 reveals that one of the crimes that will be tried in "B" Court for instance, was committed in 2002. The larger percentage of the crimes for which accused persons are arraigned before all three of our criminal courts in Harare were committed in 2003 and 2004. While in comparison to the record nineteen years, a delay of eight or seven years may appear relatively short, we must always bear in mind that the accused person has had this trial hanging over his or her head for that period. They may be in custody. They may be out on bail. In my view, the difference is little for the anxiety that one has awaiting such a life changing event as a murder trial is difficult to measure and compensate for. I am aware that in assessing sentences after conviction, our judicial officers always take into account the time spent awaiting trial and will temper the sentence with the necessary degree of mercy. What of the case of the accused person who after such a period of waiting is found not guilty?

The facts that I have given above relate to cases that have now been set down for hearing before this court. I would want to believe that a check with the police and prison officials will reveal

some even older offences that have not yet been set down for trial. The same pattern repeats itself throughout the country and is even worse in the centres where we can only hold circuit courts of two weeks each term.

Accused persons before our courts have the right to be tried within a reasonable time and our reckoning of what a reasonable time is in itself fast becoming unreasonable.

The delays in our criminal division are still a cause for concern and it is my hope that the courts, the police and the office of the Attorney General will work together to come up with a strategy that will shorten the period between the arrest of an accused person and their trial for the offence.

CIVIL TRIALS

Bulawayo high Court saw the issuance of 2521 new processes during the course of the year. Harare had by 2 December 2009, issued 6069 new processes. The numbers show a slight decline from the previous year's figures of roughly 3000 and 7000 respectively. While no scientific study has been carried out on the cause of the decline, we believe that the absence of mortgage bond cancellations and debt collections by banks and other lending institutions has to some extent contributed to the decline in the number of cases coming before the civil courts.

The cost of litigation is still high for most as the economy starts to gain lost ground under the multi-currency regime.

Due to a number of factors, the least of which is the drop in the number of new processes issued by the two courts, we have scored major success in curbing the backlog in civil trials and 2009 saw us scaling to even greater heights in achieving efficiency in dealing with civil trials in Harare. For this remarkable achievement, I wish

to acknowledge the hard work of my brothers and sisters on the bench and the cooperation that we have received from the legal profession. Our pre-trial procedures have become more robust with time and continue to reduce the matters that need to be referred to court for trials. Our fast track court and the specialized courts dealing with commercial matters and family law matters have enabled us to completely eradicate systemic delays in setting down civil trials. Any matters that were ready for trial during the year 2009 and were not tried in that year were postponed at the request of the parties. The system was ready to deal with the matters.

The system would have achieved greater efficiency had the bench been adequately manned.

The system needs to be properly positioned to deal with the increase in litigation that will ensue with the projected growth of the economy. This is the time to plan when we are on top of the situation

The inadequacy of the number of judges serving the populace is more particularly felt at the High Court in Bulawayo. For the best part of the year, the station had three judges only and due to its size, catering as it does for the southern part of the country, the three judges stationed in Bulawayo were overwhelmed. The litigants in that part of the country did not receive as efficient a service as their counterparts issuing process out of Harare received. We still talk of a debilitating backlog in the opposed motion roll for Bulawayo with the legal fraternity in that part of the country asking for my intervention. At the last count, there were 104 applications ready for hearing with no judge to hear the matters.

We in the judiciary have no justification or excuse to offer for the disparity in the quality of service that the two centres are giving to litigants. We know what needs to be done to improve output

in Bulawayo. It is however not within our power to implement the solutions.

CONDITIONS OF SERVICE AND NEW APPOINTMENTS

We have been informed that our conditions of service are so unattractive that no new appointments can be made to the bench.

That our conditions of service are scandalous is now common knowledge. That the nation cannot have new judges appointed to the bench without first improving on the conditions of service of sitting judges goes without saying.

Allow me to digress briefly and express a view that has exercised my mind for quite some time and I must confess, a view that should not ordinarily occupy the mind of a judge.

Zimbabwe subscribes to the doctrine of separation of powers amongst the three organs of state. We in the judiciary have no role in matters of the executive and of the legislature. The reverse should also hold. However, I am of the view that the doctrine of separation of powers has been applied against the judiciary to place it in an isolation that is neither splendid nor beneficial to any one.

AS citizens, we in the judiciary witnessed debates held at political levels as to the number of legislators that can effectively represent the population in the sphere of law making and providing oversight over government spending and government activities. The result of that debate was the creation of the second chamber to cater for the needs of the populace.

It is a welcome development as it seeks to enhance efficiency and a better service to the populace.

We even hear of late that the legislature is to erect a state of the art parliament that will cater for the increase in the number of legislators and one that will include on site accommodation for legislators coming from outside Harare, in the form of a motel.

Again as citizens, we witnessed debates on the creation of the Government of National Unity. Ministers were appointed to various ministries and we have seen the careful thought that has gone into ensuring that every aspect of the executive function has a responsible minister or two overseeing it.

Again we applaud the development as it seeks to enhance efficiency on the part of the executive.

Resources were found to cater for the increases in the legislature and in the executive, to ensure that these two arms of state deliver effectively to the populace.

As we speak, four Governors and Resident Ministers and a host of Senators and Members of Assembly serve the same population that the three judges in Bulawayo attempted to serve during the year 2009.

A convenient answer from the politicians will be that different considerations apply amongst the three organs of state. This is indeed correct. But should service to the populace not be the paramount consideration?

Separation of powers surely does not mean separate development of the organs of state? Or does it?

I have no further submissions to make on the digression.

DELAYED JUDGMENT

We still experience a challenge in handing down judgments in civil trial within a reasonable time. I still receive letters of concern from legal practitioners asking my office to intervene and ensure that a long delayed judgment is handed down. The letters have been fewer this past year and I believe it is not because we no longer have delayed judgments. We still have pockets of inordinate delays here and there and I would want to encourage legal practitioners to continue to write to the registrar's office, or to my office as a last resort, highlighting any concerns that you may have over delayed judgments. We assure you that we respond to each and every letter received inquiring over a delayed judgment.

OTHER COURTS

You will all note that while we are gathered here to mark the commencement of the legal year and I have given you a detailed account of what happened in the High Court during the course of 2009. I am unable to give you details of what work was done in the magistrates courts where 90% of all judicial work is carried out. I am also unable to tell you what workload the specialized courts have had to contend with during the past year and what their cherished hopes and dreams for the coming year are. In this regard I feel that my address to you this morning is at best incomplete and at worst fraudulent as it misrepresents what is obtaining within the judiciary.

Despite the promulgation of the Judicial Services Act in 2006, we are still not a unitary judiciary. The magistracy still falls under the direct control of the executive and is not accountable to the Chief Justice. The specialized courts, dealing with administrative law issues and labour matters, are neither divisions of the High Court nor accountable to the Chief Justice. The impact of this fragmentation of the judiciary is that the bulk of the judiciary is denied a voice at the official opening of the legal year and presidents of the specialized courts and the magistrates are treated as visitors at an occasion that they must host. The hard work of the magistracy and the specialized courts is not publicly celebrated and their concerns and aspirations as judicial officers cannot find their way into the public domain.

We in the judiciary were encouraged when it was indicated that the unification of the judiciary was one of the one hundred days targets of the government of national unity. The one hundred days have come and gone and we are still a fragmented judiciary.

We still wait for the Judicial Services Act to be brought into operation and hope that 2010 will see our dreams turn into reality.