

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



**KEYNOTE ADDRESS BY
THE CHIEF JUSTICE OF ZIMBABWE**

THE HONOURABLE MR JUSTICE LUKE MALABA

**ON THE OCCASION OF
THE REGIONAL MAGISTRATES' COLLOQUIUM**

**HELD AT
CARIBBEA BAY RESORT, KARIBA**

7 JULY 2022 – 10 JULY 2022

**TITLE: PERCEIVING REGIONAL MAGISTRATES AS THE
GUARDIANS OF THE MAGISTRATES COURTS'
JUDICIAL AUTHORITY**

SALUTATIONS,

The Judges of the High Court here present; the Secretary of the Judicial Service Commission, the Chief Magistrate and all regional magistrates; the Head of the Judicial Training Institute of Zimbabwe; our delegates from UNICEF and Justice for Children; distinguished guests; and members of staff of the Judicial Training Institute of Zimbabwe and the Judicial Service Commission.

We are gathered here to take part in this august regional magistrates' colloquium. It is my singular honour and privilege to address you on this occasion, which entrenches the judiciary's commitment to the continuous development of its members. One can say without exaggeration that judiciaries shed light on and ensure the beneficial pursuit of a nation's desired social, political and economic aspirations. This is the paramount effect of the work of any judiciary when properly done.

Although the judiciary's paramount role is often regarded by others as a routine duty of adjudicating over civil and criminal disputes, there is a great danger if the judiciary itself misunderstands its role and purpose.

In other words, every member of the judiciary must possess a correct and unmistakable understanding of the fundamental role of the institution to which he or she belongs. The common understanding is that regional magistrates, as constituent members of the judiciary, must be well-resourced to take part in fulfilling the judiciary's constitutional role. This is why I have deliberately decided to dedicate a portion of my address to the purpose and role of regional magistrates.

THE PURPOSE AND ROLE OF A REGIONAL MAGISTRATE

The Constitution of Zimbabwe informs all of us of the purpose of all judicial officers, including regional magistrates. In simple terms, the primary purpose of judicial officers is to exercise the judicial authority that is vested in the courts. But a more profound understanding of the purpose of judicial officers lies in the very reason for vesting judicial authority in the courts.

It seems to me that judicial authority basically refers to the power to hear disputes and to interpret laws. As I have already alluded to, judicial authority is vested in the courts. The reason for vesting judicial authority in the courts is to enable them to hear disputes and to interpret

laws. In the process of hearing a dispute or in interpreting a law, the common feature is that there is a conflict of claims, interests or opinions by the contesting persons. By necessity, differences in claims, opinions or interests invite adjudication as a means of ensuring that such differences are resolved. Without adjudication, there is a great risk that people involved in a justiciable conflict will resort to self-help which will more often than not be harmful. Hence, judicial authority is inherently a power of adjudication that ensures fairness and justice in a peaceful manner.

Ladies and gentlemen, there obviously must be a means by which judicial authority is exercised. I have already stated that it is through judicial officers that judicial authority is exercised. Judicial authority derives its importance from the need to establish a power that can hear disputes and interpret laws in a society. Such an important task has not been passed to any ordinary entity. It has essentially been bestowed on the judiciary. Judicial authority is not given to ordinary people but it is given to those people who are considered as being qualified and capable of fair adjudication. In this light, the purpose of judicial officers becomes self-evident — judicial officers exercise the power to hear

cases and interpret laws in order to ensure the harmonious co-existence of people.

I have taken the time to set out the purpose of judicial officers because it is within the broader category of judicial officers that the regional magistrates can be located. Indeed, the judiciary is a complete body that is made up of individual members. Each member is a like an organ belonging to a body. In order for an individual member to truly remain part of the whole body, he or she must always be compatible with the rest of the body. In this regard, regional magistrates ought to be considered as attaching to the wider judicial body. They, too, carry and must display a purpose that is similar to that of the rest of the members of the judiciary. Regional magistrates also partake of the exercise of judicial authority. I, thus, say that the exercise of judicial authority ought to be regarded as a regional magistrate's primary purpose.

Regional magistrates exercise judicial authority for the same reasons that other members of the judiciary exercise judicial authority – that is, to hear disputes and to interpret laws. Lying at the centre of the exercise of judicial authority is the quest for justice. Societies that are governed

by law acknowledge that they are given to disputes regarding the interpretation of the laws they put in place for themselves. They also acknowledge that it is well-nigh impossible for them to coexist without disputes that undermine their social and economic objectives as well as peace and order. But there is an additional acknowledgement - to coexist and peaceably pursue their lives, someone must resolve disputes arising between people and interpret the laws in place. The resolution of any disputes and the interpretation of laws which is assigned to the judiciary is, thus, regarded as a solution to the threats of peaceful coexistence in a society that is governed by law.

I must add that in acknowledging the need to ensure that disputes are resolved, a society must also accept that everyone is equal and has inherent dignity. There would be no point in resolving conflicts about claims of rights or other legal interests between persons if the individuals are not equal and do not all possess inherent dignity. Equality and inherent dignity are inviolable. Every person's equality and dignity must be protected and where it is violated it must be reasserted. Such acceptance of the equality and inherent dignity of every person has no exceptions. Given that every person's equality and

dignity must similarly be protected, common standards emerge to defend against any violation of them. Without a common standard, there is a great risk that equality and inherent human dignity will not be maintained. If equality is not maintained, the dignity of every person is upset, thus exposing some people to abuse and manipulation by stronger people. Therefore, those that are charged with the role of hearing disputes, such as regional magistrates, must be conscious of the need to do so in a manner that affirms the equality and inherent dignity of every person. The exercise of judicial power is meant to maintain the equality and inherent dignity of every human being – that is, to do justice.

With these remarks, I come to the question of how regional magistrates can do justice to all manner of people and uphold their equality and inherent dignity. There is a respectable body of principles establishing the manner in which judicial authority is to be exercised by regional magistrates. The manner in which this authority is used is the purpose for this colloquium. It determines whether or not regional magistrates are able to properly do justice to all.

A judicial officer does not exercise judicial authority arbitrarily. Rather, he or she is always expected to pay meticulous attention to the principles in place and standards demanded of him or her. Some of these include the provisions of the Constitution setting out the principles which guide judicial officers, the rules of procedure, and the codes on judicial ethics.

I must state that the principles regulating the exercise of judicial authority by regional magistrates are designed to ensure uniformity, consistency and objectivity. But to be able to ensure the uniform, consistent and objective delivery of justice, all judicial officers must necessarily conform to particular judicial attributes and standards. There are several reasons why this is particularly true of regional magistrates. I will set these reasons out.

First, as regional magistrates you are the most senior judicial officers within the magistracy. You enjoy correspondingly greater jurisdiction. For instance, your territorial jurisdiction spans across a wide geographical area. In some cases, the area over which you enjoy jurisdiction cuts across four or even five Provinces. You exercise

jurisdiction over most of the crimes within the magistracy, including over some heinous crimes like rape. Your jurisdiction as to punishment is even greater than that of other magistrates. Ordinarily, the maximum sentence that a regional magistrate can impose on a convicted person is imprisonment for ten years or a fine of level twelve, or both. In anyone's book, the power to impose a sentence of ten years' imprisonment on a person is obviously great. In certain cases prescribed by statute, the jurisdiction as to sentence may even be increased.

Second, as regional magistrates you supervise subordinate magistrates in several respects. Of course, the foremost supervisory function is to scrutinise proceedings presided over by other magistrates, other than yourselves, wherein a fine above level four but below level six or a sentence above three months but below twelve months was imposed on a convicted person. I pause to observe that in carrying out such a task, the regional magistrate considers whether the proceedings were in accordance with real and substantial justice. Through this test, it becomes apparent that the attainment of real and substantial justice is the basis of your supervisory powers.

More fundamentally, the exercise of your supervisory powers over other magistrates extends to ensuring that there is complete compliance with scrutiny, review and appeal procedures. The scrutiny and review procedure is statutorily determined to be executed within a period of one week. This period of time is a legal requirement and it was legislated for a germane purpose, being to ensure that any travesty of justice that ensues as result of ineptitude or excess of zeal is timeously remedied. As regional magistrates, it is incumbent upon you to jealously guard this procedure. Do not condone the submission of scrutiny records out of time. Magistrates who submit their records out of time act *ultra vires* the law. They must face consequences for that unacceptable conduct. Your office as regional magistrates makes you the *de facto* vanguard of this procedure. Consequently, you are also required to ensure that records which come before you for scrutiny are dealt with promptly, lest the process becomes academic and the purpose for which the process was established is defeated. I hear cases of regional magistrates holding onto scrutiny records for long periods, sometimes even in excess of a month. This is unacceptable.

In equal measure, the appeal process is circumscribed. An appeal must be executed within a period of twenty (20) days. These timelines are not discretionary and thus are not a matter of individual choice and preference. They are peremptory and they bind all magistrates alike. It is also incumbent on you to ensure that your records for appeal and review are processed expeditiously and within the legislated timelines. I get worried when I hear cases of regional magistrates submitting records for appeal and review way out of time. You are not immune to the legally laid down timelines, no matter your reasons for not complying with these. You are in charge of your record and must ensure that it is submitted within the stipulated timelines, and when that is not done, you cannot impute blame on the clerk of court or the transcriber. The buck stops with you.

Judicial education and training is one of your key supervisory duties. Training must be systematic. You cannot, as a regional magistrate, just thumb-suck topics and foist them on junior magistrates. You need to develop that skill to note performance gaps in the junior magistrates. Training must be informed by properly identified training needs, as informed through scrutiny as well as monitoring and evaluation

processes. It must be properly prepared for and it must be effectively evaluated. A regional magistrate must be able to train and develop other magistrates. This is the essence of judicial leadership and jurisprudential excellence.

Quality of justice is a function of acting fairly and speedily in accordance with the applicable procedural and substantive rules of law. Justice delayed is justice denied and in this regard it is imperative for you to enforce effective case and court management. The major cause of the failure of justice is the incessant postponements which are times without number granted at the courts without adequate and just cause. You hear of regional magistrates who sit in court for five minutes, thirty minutes or one hour a day, yet there are piles and piles of cases waiting to be tried. This should not be so. I am told in some stations the bulk of regional cases are parked in the Provincial Court, such that it is the Provincial Court which is accounting for those records while there is a mirage of a well-managed backlog in the Regional Court. I am advised that in some instances, when the Provincial Court finally refers those records to the Regional Court for trial, the Regional Court does not allocate a case number to such transferred matters until the trial date.

In the meanwhile, those records are unaccounted for and are in no-man's land for periods that can stretch up to three months, giving a false impression of the actual matters in the Registry.

Each record must be accounted for. It is only when you have a true picture of your statistics that you are able to devise means and ways of managing your courts and your cases. You need to introspect on how you are managing your courts and your cases. Judicial independence does not mean you are not accountable. You cannot sit in court for a few minutes, not observe court sitting times, fail to make decisions expeditiously, or postpone matters willy-nilly under the guise of judicial independence. You are accountable for how you spend your work time and the resources allocated to you. You cannot be on a frolic of your own when you are required to be working and at the end of the month still expect to be compensated for work done. That is a misplaced notion of judicial independence.

Third, the qualifications for appointment to the office that you occupy, that is the office of a regional magistrate, are even higher than those of other magistrates. In practice, all regional magistrates are qualified

legal practitioners who usually would have held a magisterial office for no less than ten years. This is also telling of the role of regional magistrates – it is a role requiring both knowledge and the wisdom of experience.

The great range of jurisdiction and supervisory powers exercised by regional magistrates is all undergirded by considerations of the full attainment of justice. To understand your role, you must ask yourselves why the Legislature would confer greater jurisdiction and supervisory powers on you as regional magistrates. Obviously, this state of affairs is an arrangement by design. It has been fashioned to guarantee the proper exercise of judicial authority by the magistrates' court at large.

Having said this, the question I pose to you today is how do you exercise your judicial authority as a regional magistrate? Are you aware of the manner in which you are expected to behave and conduct yourself? This is a critical issue not only today but during your entire tenure as a regional magistrate.

I will set out some of the principles guiding the way in which you exercise judicial authority as regional magistrates. I draw upon five

attributes that are consistent with the exercise of judicial authority by any judicial officer.

First, a regional magistrate must be knowledgeable. Knowledge is not only the awareness of the law and information needed for the execution of your functions but also the ability to apply this information objectively, correctly and in the appropriate circumstances. The presumptions behind the greater jurisdiction accorded to a regional magistrate and the supervisory functions over other magistrates stand on the foundation that a regional magistrate would have obtained sufficient knowledge and experience to perform those functions. If a regional magistrate is unable to apply his or her knowledge or, worse still, lacks the ability to apply the knowledge he or she has in the exercise of his or her judicial authority, then injustice is likely to occur.

Sitting at the apex of the magistracy, the expectation is that you possess the right acumen and aptitude to be where you are. I do not expect, at your level, to hear that a regional magistrate is failing to analyse or properly critique evidence placed before him or her. I also do not expect to hear that you are failing to put together a well-reasoned judgment

which clearly shows your thought process. This should be elementary. I reiterate that when you are appointed to the regional bench, you would have gone through the rigors of the magistracy and are therefore expected to be able to guide junior magistrates. This becomes impossible when you yourself are not able to exercise the judicial function competently.

This brings me to the second attribute - a regional magistrate must be competent. At the core of competence is the ability to execute tasks properly, successfully and with efficiency. It is against logic to bestow judicial authority on a person who is unable to successfully exercise such authority with efficiency. In this regard, I am sure that you would agree with me that your supervisory function depends on your ability to so supervise promptly. The requirement to be competent is implicit in the constitutional principle that justice must not be delayed. Laziness and disorder have no place in you.

Third, a regional magistrate must always be diligent. Diligence is closely tied to the attentiveness and care that one applies in the performance of any activity, task or function. Again, there is a

constitutional basis for regional magistrates, like any other judicial officer, to perform their tasks diligently. I say so because there is a great measure of public trust that is given to regional magistrates, since a person qualified to occupy such an office is considered to be the right person to fairly hear disputes regarding serious crimes. In bestowing important judicial authority on a regional magistrate, the people anticipated that only a person of the calibre of a regional magistrate can discharge such a function. You must, therefore, always remember that inattentiveness and carelessness in the exercise of judicial authority is a shameless betrayal of the public trust that is vested in you.

Fourth, a regional magistrate must act with impartiality. Acting with impartiality demands a regional magistrate to be fair and act with equality in the treatment of persons. As with knowledge, competence and diligence, the reason for demanding impartiality from regional magistrates is contained within the purpose of exercising judicial authority. It can never be overemphasised that a judicial officer must not behave in a manner that suggests partiality and partisanship. One bad case of impartiality can stain the entire judiciary.

Finally, as regional magistrates, you must all carry a strong sense of justice. Justice inherently implies acting with fairness towards all people. I reiterate that fairness towards all is founded upon the equal and inherent dignity of every person. To this end, logic and common sense are among the primary attributes that influence the development of a strong sense of justice. I have said that the attainment of justice is one of the key reasons for giving judicial authority to you. Indeed, it is self-defeating for any person to trust a person who has no sense of justice to resolve a dispute between himself or herself and another person.

With the five attributes in mind, I assure you that this tall order of judicial uprightness and rectitude is attainable.

A FEW REMARKS ABOUT THE COLLOQUIUM

I highlight in this address that there is purpose behind this colloquium. Its timing, venue and programme were deliberately chosen and created. Its timing is beneficial to you because it will give you the added advantage of taking stock of your annual progress thus far. However, for this colloquium to be truly a success and yield results, we must share

in its objectives and purpose. I will, therefore, allude to the institutional objectives underlying the colloquium.

You may recall that during the official opening of the 2022 Legal Year, I adverted to the caseload statistics of all court stations. I highlighted that although the regional division of the magistrates' court received less cases in 2021 as compared to the year 2020, completed cases went down by **938** matters in 2021. Your backlog increased by **442** cases. The clearance rate was **69%** in the year 2021 as compared to **80%** in 2020.

Granted that there are several challenges that are faced by the magistrates' court in the administration of justice and that the COVID-19 pandemic stalled progress, a decline in performance is unacceptable. For this reason, as the Head of the Judiciary, I do not take lightly the collective responsibility on judicial officers to take reasonable steps to maintain and enhance their professional knowledge, skills and personal qualities, and in particular to keep themselves abreast of developments in domestic and international law. This obligation and responsibility is precisely why we are here today. And as the colloquium takes place,

bear in mind the five attributes I set out above of knowledge, competence, diligence, impartiality and a strong sense of justice.

The realisation of these attributes is an objective that is embedded in all the presentations and activities that are lined up in the programme.

The chosen topics will equip you with core skills for efficient and effective justice delivery. There will be presentations on legal principles, as well as plenary sessions to discuss various substantive topics. Discussants have also been nominated in respect of most presentations to stimulate reflection on the presentation.

It is my hope that the presentations by the Judges and chosen speakers will be beneficial to all of you in your roles as senior officers of the magistrates' court.

THE INTEGRATED ELECTRONIC CASE MANAGEMENT SYSTEM – IECMS

Allow me to take this opportunity to inform you of the key developments that have been taking place within the courts. I firmly believe that whenever the opportunity presents itself, I must update you on various and encouraging developments taking place within the

judiciary. I do not think it is proper that you learn about the developments from the media. As members of the judiciary, you are entitled to have first-hand information on the goings-on of the organisation.

As the year commenced, I stated that it marked a very important transitional phase in our jurisdiction as the increasing use of technology was earmarked to have a transformative influence on our operations.

You must be aware that the IECMS, which is a computer-based and web-based system that manages and tracks all aspects of cases filed in the courts, was launched on **01 May 2022**. The Judicial Service Commission is in the process of integrating all our courts on the IECMS platform. Headway has already been made in integrating all the superior courts. In a related vein, the establishment of virtual courts, with an objective of widening access to the courts and remote participation in court proceedings, has also taken shape.

I must assure you that the IECMS is now on the thresholds of your courts, as we are working towards the second phase of its implementation. In this regard, there is a need to change attitudes and

wholeheartedly embrace the paradigm shift towards technology-based court services. No-one among you should pretend to have been caught unawares when this fully happens.

Training programmes for the implementation of the IECMS and virtual courts have been carried out and remain in place for all judicial officers. Magistrates have already started and will be undergoing rigorous and comprehensive training to keep them abreast of the operation of computers and computer-based equipment that come with the IECMS and virtual courts. Training will also be afforded to all the employees of the Judicial Service.

CONCLUSION

I am pleased to express my immense gratitude to all our stakeholders who have made this colloquium possible. I value the time you have taken and the resources that you have put in for its success.

I express my thanks to the Judicial Service Commission Secretariat, led by Mr W T Chikwana, which worked around the clock to ensure that this event is a resounding success. The same nod of appreciation goes to our service providers for availing the resources that were required to

realise this event. I further acknowledge the work that the Judicial Training Institute of Zimbabwe is doing in ensuring that the training needs of both members of the judiciary and employees of the Judicial Service Commission are met. Finally, I am grateful to UNICEF for its support of and participation in this event.

I close by saying that we all hope to see the evidence of this event in the exercise of your judicial authority. Again, I invite you to participate constructively, engage robustly, and take the occasion presented by this forum to critically reflect on difficult areas of practice and take advantage of the presence of the facilitators and colleagues to find answers. With these words, I wish you all a fulfilling experience over the course of this colloquium.

I thank you.