

**SPEECH DELIVERED BY THE DEPUTY CHIEF JUSTICE,
THE HONOURABLE MR JUSTICE L. MALABA AT THE
OPENING OF THE 2017 LEGAL YEAR: BULAWAYO: 16
JANUARY 2017**

I recognise the following dignitaries who have graced this occasion:

Judges of the Labour Court- Hon. Justice Moya-Matshanga and Hon. Justice Kabasa;

Retired Judges Hon. Justice Ndou and Hon. Justice Nare;

Commissioner of the Judicial Service Commission, Mr Josephat Tshuma;

Officer Commanding Bulawayo Province, Zimbabwe Republic Police, Senior Assistant Commissioner Mutamba;

Officer Commanding Bulawayo Metropolitan Province, Zimbabwe Prisons and Correctional Services, Senior Assistant Commissioner Jomani;

High Court Assessors here present;

Regional Magistrates and all magistrates here present,

Members of the bar here-present;

Councillors of the Law Society of Zimbabwe, Mr. G. Nyoni, Mr. N. Mazibuko and Mr T. Masiye-Moyo;

The Chairperson of the Law Society of Zimbabwe Board of Trustees, Mr Promise Ncube and members of the profession here present,

Members of the media fraternity here- present

Distinguished guests;

Ladies and gentlemen;

On behalf of the Judiciary and the Judicial Service Commission, I welcome you to this ceremony to mark the official opening of the 2017 Legal Year. Your presence at this occasion not only adds invaluable significance to the occasion but also attests to your keen interest in the administration of justice.

The Constitution of Zimbabwe imposes on the State and every person the duty to promote national unity, peace and stability. These can only be achieved if all the arms of government diligently play their respective roles in a transparent, just, accountable and responsive manner. The role of the judiciary in the administration of justice becomes key. It is a critical role because of the constitutional duty thrust on the bench to exercise judicial power impartially, promptly and in a manner that safeguards public confidence in the judicial system.

The fact that this ceremony is graced by the presence of senior officials from the executive and legislative branches of government testifies to the fact that the three organs of State, exist for the singular and common purpose of providing efficient, effective and expeditious service to the people in accordance with the requirements of the Constitution and the law. These organs therefore share with us a common vision of a good administration of justice based on high standards of professional conduct.

The judiciary is accountable to the people of Zimbabwe from whom it derives its judicial authority. The ceremony to officially mark the opening of the legal year is therefore to us a momentous occasion. Firstly, it affords us the opportunity to apprise the nation on the performance of the judiciary in the preceding year, highlighting the challenges encountered and suggesting possible solutions for them. Secondly, it affords us the opportunity to share our vision on the journey yet to be undertaken in the coming year.

Inspiring us is the recognition that public confidence in our system is the basic yardstick upon which we can measure our worth. People should see the judicial system as viable, responsive and fair. One of the facets of the administration of justice is the just and proper resolution of disputes by the courts in accordance with the Constitution and the laws

of the land. There can be very little or no complaint when those who deserve justice get it.

The Constitution of Zimbabwe in section 69 (1) guarantees every person the right of access to the courts, or to some other independent and impartial tribunal or forum established by law for the resolution of disputes.

Access to justice is the hallmark of any civilised and democratic society. The questions one would need to answer are, what is access to justice and how can one access justice?

In the narrow sense, it means allowing a person who wants to access the courts to have their day in court. This narrow concept however has its own limitations because the notion of access to justice goes beyond a litigant simply accessing the court.

Justice cannot be complete unless there is proper access to it. In the broader and perhaps more acceptable sense, access to justice means being treated fairly according to the law. Should you be treated unfairly, you should be able to get the appropriate redress. It means availing to the ordinary citizenry the platform to actively participate in every institution where law is debated, created, organised, administered, interpreted and applied.

With regards to the judiciary, access to justice involves extending the reach of the system to the general populace by removing barriers for its use. It is not limited to more courtrooms and more staff. It also speaks to the quality of justice.

Judicial systems that are inaccessible, unaffordable, slow and whose procedures are incomprehensible to the people who are expected to benefit from them effectively deny them access to justice.

There must therefore be a quantitative and qualitative growth to justice in order to remove these barriers. Better prepared counsel, improved proximity to the courthouse, simplified procedures and more information about the justice system are some of the means for improving access to justice.

The judiciary is guided by the constitutional principles set out in section 165 of the Constitution. In exercising its authority, the judiciary must remain cognisant of the need to do justice to all, irrespective of status; dispensing justice efficiently and with reasonable promptness. The judiciary must always be conscious of the fact that their role is paramount in the safeguarding of human rights and freedoms and the rule of law.

Protection of fundamental rights and freedoms and the rule of law is a vital check and balance in any constitutional democracy. The checks and balances however can be meaningless without access to justice or the practical means for the public to understand and enforce the law. A judiciary worth its name should make concrete, identifiable efforts towards removing all barriers that may hinder access to justice.

The world's best judicial systems are anchored on the attributes of accessibility, accountability, efficiency, transparency, independence and professionalism. While these attributes are obviously different, they are intertwined and all have a bearing on access to justice.

The Judicial Service Commission recognises that for the judicial system to be considered world-class, it has to be anchored on these attributes. In crafting its second five-year Strategic Plan (2016-2020), the Judicial Service Commission included accessibility as one of its core values, and undertook to avail well-equipped court facilities within reasonable physical proximity to all communities, including people with special needs. It also undertook to maintain affordable court costs; and to provide information in various language translations on how to navigate within the judicial system so that all those

who need justice can access it easily. The Judicial Service Commission seeks to promote equitable access to justice through the elimination of cost, infrastructure and knowledge barriers.

The past year was, of course, especially noteworthy in ensuring that accessible justice for all is realised. The first permanent High Court to be built in independent Zimbabwe was opened in Masvingo on 30 May 2016. Four magistrates' court houses were also opened at Victoria Falls, Murambinda, Goromonzi and Mvuma.

The creation of these facilities was borne out of the realisation that when people travel long distances in search of justice or where the state of court facilities cast aspersions on the integrity of the justice delivery system, one cannot talk about there being access to justice.

A court building should further assure the people of the protection and enforcement of their rights and liberties in a just, fair, non-partisan and impartial manner. It should serve as credible evidence of the commitment to live our vision of a Zimbabwe in which world class justice prevails by taking services closer to the people and having quality structures that represent and befit the nature of the business of the courts.

We are excited that the state of the art structures at all these stations resonate with the dispensation of justice in a fair and impartial manner. These facilities have not only improved our efficiency in service delivery but have equally enhanced our integrity and honour as the judiciary.

Going forward, plans are afoot to also renovate the Bulawayo High Court to match courthouses of similar stature.

As I remarked earlier, access to justice can also be hampered by prohibitive court fees. Cost barriers need to be removed to ensure that the fruits of accessibility are fully realised.

In response to the growing concerns on the cost of photocopying records in the High Court, the fees were reviewed downwards by ninety-percent in 2016 from a dollar per page to ten cents a page.

Taxation of bills of costs had become prohibitive as the fees were charged on a percentage basis. These were again revised and a flat fee is now being charged.

Independence and impartiality in the dispensation of justice provide useful objective tools by which to measure the effectiveness of the administration of justice. A corrupt judiciary cannot claim to be totally independent and impartial. A corrupt judiciary is a hindrance to an effective

justice delivery system and ultimately access to justice. It therefore becomes critical to walk the talk in the fight against corruption by putting in place concrete and recognisable measures to address the ills associated with corruption.

The fight against corruption demands a shared commitment to eliminate it from the halls of justice. The Judicial Service Commission (JSC), together with key stakeholders in the justice delivery system namely the Ministry of Justice Legal and Parliamentary Affairs, the National Prosecuting Authority (NPA), the Attorney General's Office, the Law Society of Zimbabwe, the Zimbabwe Republic Police (ZRP), the Zimbabwe Prisons and Correctional Services (ZPCS) and the Zimbabwe Anti-Corruption Commission on 5 February 2016 joined hands to speak with one voice against corruption through the launch of the 'Against Corruption Together' (ACT) campaign.

The stakeholders agreed to streamline the investigation, prosecution and adjudication of criminal cases involving corruption in order to expedite the processes at each of the necessary stages.

Each stakeholder has a role to play. Each is enjoined to set up specialised teams and areas to deal with corruption

cases, without compromising the autonomy of the organisation. Motivated by the realisation that there was need for greater co-ordination between the ZRP, the NPA and the JSC, a 'Protocol on the Management of Criminal Cases involving corruption' is being developed to guide the management of cases involving corruption.

It is the key function of the Judicial Service Commission to promote and facilitate the independence and accountability of the judiciary, and ensure the efficient, effective and transparent administration of justice in Zimbabwe.

The quest to improve and enhance effectiveness and efficiency of the administration of justice is a continuing one. It is indisputable that for the courts to attain legal excellence, provide effective service delivery and enhance access to justice there is need for its personnel to be provided with continuous education and training.

The Judicial Service Commission is committed to training all members of the Judicial Service. Several training programmes were conducted in 2016.

Cognisant of the fact that the judiciary does not operate in a vacuum, there is also regular consultation with the legal profession. We acknowledge the joint effort always made with the legal profession towards the realisation of the

commonly shared ideal of ensuring an efficient justice delivery system.

It has become a tradition to meet with members of the profession to discuss issues of concern to improve the delivery of justice. Last year was no exception.

The 2016 joint colloquium was of great importance to us. For the first time, the offices of the Attorney General and the Prosecutor General participated. The colloquium, which ran under the theme “ *Towards SDG 16: Building effective, accountable and inclusive institutions at all levels of justice delivery*”, interrogated the role each of the justice delivery sector actors can play to improve access to justice for all by 2030.

It also focused on the different ways of ensuring inter-agency cooperation between the stakeholders without compromising institutional independence. The participants explored measures each sector can take to substantially reduce all forms of corruption and bribery in order to develop effective, accountable and transparent institutions in the justice delivery system.

For us to derive maximum benefit from these colloquia it is paramount for each stakeholder to play ball and follow up on the measures agreed upon and the resolutions passed.

Another dimension of access to justice is that the law must be clearly laid down and easy to understand. A number of changes occurred on the legislative landscape in the preceding year.

The Constitutional Court Rules were gazetted on 10 June 2016. This was a welcome development as the Constitutional Court had hitherto operated on the basis of practice directions since its establishment by the new Constitution in 2013.

I have already mentioned the downward revision of some High Court and Labour Court fees to improve access to justice.

The jurisdiction of the Small Claims Court was expanded in the preceding year. Previously, only the Harare and Bulawayo courts were gazetted as Small Claims Courts, a situation which was untenable amid calls for a conducive environment responsive to the ease of doing business initiative.

The revision of the Labour Court Rules and the Magistrates' Court Rules progressed significantly in 2016. We look forward to more simplified, user friendly Rules for both courts before the end of 2017.

You will recall that in his address opening the 2016 Legal Year, the Chief Justice of Zimbabwe, the Hon. Mr. Godfrey

G. Chidyausiku bemoaned the absence of a rule in the Rules of the High Court to automatically render idle processes lapsed if they are not prosecuted within a reasonable time after filing with the court.

The Chief Justice then published Practice Direction number 2 of 2016 in September 2016 to address the issue of idle chamber applications. I am advised that our courts have already started enjoying the benefits of this practice direction.

Going forward, work will commence in 2017 to revise the High Court Rules so that they are responsive to present day needs and close some of the gaps abused by the litigating public. Such abuse is against the spirit of access to justice.

Following fast on the heels of clearly laid down laws is the availability of legal representation. As you are aware, the High Court rules provide for pro-deo counsel and *in-forma pauperis* representation in appropriate cases. Properly executed, these are useful tools which add value to access to justice.

I am advised that the Legal Aid directorate is in the process of crafting its own strategy and has consulted a number of stakeholders to improve access to justice by the indigent.

For our part, key stakeholders in the justice delivery system launched the help desk initiative at the Murambinda

Magistrates’ Court in 2016. The practice would be introduced at other courts to ensure that the general public understands their rights and the means for claiming them.

I come now to the work done by the High Court in Bulawayo in the past year.

Statistical data on the status of cases in any court is certainly a good yardstick for measuring the performance of the court as they give a picture of how the Judiciary has fared with respect to the number of cases that were registered, those that are still pending and those that were completed.

The figures on civil litigation are as follows: -

NATURE	RECEIVED	CLEARED	RATE OF CLEARANCE
PTC	215	154	72%
UNOPPOSED DIVORCE	463	359	78%
UNOPPOSED EXCLUDING DIVORCE	530	394	74%
ORDINARY CHAMBER APPLICATIONS	841	773	92%
OPPOSED MATTERS	401	182	45%
CIVIL TRIALS	54	48	89%
URGENT CHAMBER APPLICATIONS	279	287	103%
CVIL APPEALS	109	130	119%
AVERAGE CLEARANCE RATE	2892	2327	80%

The rate of clearance in civil cases was 80%.

In the criminal division, the following results were posted in 2016: -

NATURE	RECEIVED	CLEARED	RATE OF CLEARANCE
CRIMINAL TRIALS	114	80	70%
BAIL APPLICATIONS	152	175	115%
REVIEWS	2260	2229	99%
APPLICATIONS	31	16	52%
CRIMINAL APPEALS	142	166	117%
AVERAGE CLEARANCE RATE	2699	2666	99%

The disposition of criminal cases was clearly pleasing, standing at 99%.

It is because of the dedication to duty by the six Judges, with the cooperation of the legal profession and the staff, under the able leadership of Senior Judge Mr Justice Bere that I am able to report to you the positive results. The results from the Bulawayo High Court statistics display self-application, determination and sheer hard work, despite a high number of average cases each Judge had to deal with.

Guided by a figure of a total of 5591 received cases, in addition to those carried over from 2015, the amount of work is clearly overwhelming.

From an analysis of these figures there is need to expand the Bulawayo bench because the workload remains high. The Judges are still battling the carryover of the backlog from 2015, notwithstanding the good clearance rate.

Overall, all Judges have been working as hard as is humanely possible but the workload is high. Even if you put the best men and women together they would still be overwhelmed. The JSC therefore has found it necessary to add to the number of Judges. Public interviews to beef up the Supreme Court bench and the High Court bench were conducted in 2016. Results are pending.

May I also commend the Bulawayo Labour Court for a job well done. The station received a total of 540 cases made up of appeals, reviews and applications. A total of 628 matters were completed, translating to a 116% clearance rate.

The Magistrates Courts also performed very well, with the Western Division receiving 735 matters and completing 754 cases. Their clearance rate was 102.5%. The Provincial Magistrates' Court received 22 325 matters and

managed to complete 22 581 matters, accounting for a 101% clearance rate.

The clearance rate in some instances surpassed 100% because of the inclusion of arrear backlog clearance. Nevertheless, the trend is clear that the courts are putting their full weight behind the Judicial Service Commission's thrust towards access to justice. This deserves commendation.

Turning to 2017, we stand at the cusp of the Chief Justice's retirement on 1 March 2017. I am aware that the appropriate time will come to pay full tribute to the Chief Justice upon his retirement. It would however be remiss of me not to celebrate the professional life of a great man and indeed a legal luminary, a man whose contribution to the development of this Country and the judiciary is open for everyone to see.

The judiciary of Zimbabwe transformed significantly and has become a force to reckon with under his stewardship. We are grateful for the legacy he will leave us. It is a legacy of a judiciary founded on the values of independence, accountability, integrity and respect for the rule of law. I thank him for his selfless dedication to duty and to his country.

Before I conclude my address, allow me to acknowledge the immense contributions made to the development of our jurisprudence by the two Judges who retired in 2016, Hon. Mrs Justice Vernandah Ziyambi JA and Hon. Mr Justice November Mtshiya. I thank them for their meritorious service to the judiciary and to this country. I wish them well in their future endeavours.

Allow me to note with profound sadness the passing on during the course of 2016, of two Harare High Court Assessors, Mr Tutani on 17 June 2016 and Mrs Shava on 11 November 2016. On 4 January 2017, we lost Assessor Dube who was based in Hwange. I also wish to mention with sadness the passing on of five other members of the Judicial Service who were serving at the Master's office, the High Court and various magistrates courts throughout the country. May their dear souls rest in eternal peace.

Finally, I wish publicly to record my appreciation to the Zimbabwe Republic Police, Zimbabwe Prisons and Correctional Services, members of the Judicial Service Commission and all our service providers for organizing this official opening ceremony. Thank you for a job well done. We also thank all stakeholders and members of the public for gracing the event.

For now, I pronounce the commencement of the 2017 legal year.

Before this formal session closes, I shall call upon Bishop Colin Nyathi to lead us in prayer for wisdom, compassion and guidance in our work in the year ahead.

The court will now stand and following the prayer will adjourn.