

**SPEECH BY THE CHIEF JUSTICE
THE HONOURABLE GODFREY GUWA CHIDYAUSIKU
ON THE OCCASION OF THE OFFICIAL OPENING OF THE 2013 LEGAL YEAR**

Shall we all stand up and observe a minute of silence in honour of the passing on of Justice Karwi on 5 May 2012 and Mr. Nyatanga on 20 June 2012.)

Please be seated.

Mr. Attorney and Mr. Morris,

It is our tradition that at the beginning of each year, we officially mark the opening of the legal year. This occasion allows us in the judiciary to address the profession and through it, the nation at large, on the performance of the courts in the preceding year. It also affords us a chance to highlight some of the challenges that we met in our operations during the course of the year. Occasionally, we also use the occasion to express our views on other matters, views that we cannot appropriately express in our judgments.

On an occasion like this, there is an almost irresistible temptation to focus on challenges besetting the judiciary to the exclusion of all other issues, especially the successes scored during the course of the year.

Today, I intend to depart from that course and try and resist the temptation.

My departure from focusing on the challenges besetting the judiciary does not mean that the challenges have been overcome. Far from it, they are still with us. I therefore wish to assure all members of the judicial service that that my self-imposed silence today does not mean that I have washed my hands off their concerns. I have deliberately chosen to focus on all of your achievements during 2012 despite the challenges that you faced, particularly despite the

limited resources that we have had. You have all convinced me that despite challenges, positive results can still be achieved. In turn, I hope to inspire you to achieve more in 2013.

2012 started off on a sad note. In May Justice Tadius Karwi passed on untimely. Having been appointed to the High Court bench in 2002, he had been a High Court Judge for 10 years and his passing on robbed the judiciary of an experienced and seasoned judge.

As if the passing on of Justice Karwi in May was not devastating enough, in June 2012, the Registrar of the High Court, who was also the Master, Mr. Charles Nyatanga passed on. It is an understatement to say that his passing on left a void in the administration of the High court. He had been in the post of Registrar for 10 years and in the office of the Master for 21 years.

May their dear souls rest in eternal peace!

Zimbabwe shall forever be indebted for their respective contributions to the administration of justice in Zimbabwe.

I now turn to review the performance of the courts and of the judicial service in the year 2012.

2012 UNDER REVIEW.

2012 was in many respects a satisfactory year for us in the judiciary. It is my view that the judiciary turned the corner in 2012. Some solid foundations for improved service delivery were laid during the course of the year and the fruits should now start to show.

I will begin my review with the lowest courts in our structure, the Magistrates Courts.

There were a number of pleasing developments in the magistrates' courts countrywide.

- Firstly, I would like to take this opportunity to publicly commend the Chief Magistrate and his team for a job well done in 2012 which saw the backlog in that court drastically reducing from 45 000 cases to 10 000.
- I am aware that a major contributing factor to the reduction of the backlog was the opening of all circuit courts during the course of the year. This however does not detract from the hard work that the magistrates and all those who work in the magistrates' courts put in to reduce the number of outstanding cases in the lower courts.
- I regularly receive reports on the performance of the magistrates and I know that the majority of them managed to put in the minimum 60 hours of court work per month that is demanded of them. To each and every magistrate who exceeded the minimum standard, I say well done. To those who may still be struggling to meet the minimum standard, I encourage you to keep at it. You too can do it. I look forward to receiving a report where all of you meet or exceed the minimum standard that you have set for yourselves.
- Secondly, I am happy to report that our efforts to have decent courtrooms for people who file their cases in the magistrates' courts have started to yield results. We have under construction four pre-fabricated court buildings at Murehwa, Guruve, Mutoko and Tsholotsho, thanks to the assistance of well-wishers who have come to our aid.

These will be ready for use in the next two to three months. We have many more court centres where the court-house leave a lot to be desired but with the construction of the four courts that I have mentioned, I believe that we are well on our way to providing a better service to the bulk of our people who utilize the lower courts.

- We remain hopeful however that Treasury will enable us to complete and construct permanent court structures at these and other court centres as soon as funds become available.
- We continue to capacitate our magistracy through training and development programmes that have seen our magistrates in a training centre every fortnight. For those who have partnered us in these training sessions, especially the Law Society of Zimbabwe, I say thank you. I hope that our cooperation in this and other regards will continue in 2013.

I now turn to the Labour Court.

- During the course of the year, two additional Presidents of the Labour Court, Ms Erica Ndewere and Mrs. Lillian Kudya were appointed. To the two ladies, I extend a hearty welcome and wish them a gratifying experience as Presidents of the Labour Court.
- Whilst acknowledging the two appointments, I am aware that the workload in that court requires more hands. The unmanageable volume of work in the Labour court is in my view directly linked to the faulty structure of that court.
- The court is a one- stop- shop, catering for all labour disputes without a mechanism of separating the serious ones from those that may not be so serious.

- Whilst I accept that in matters of employment, especially where that employment is threatened or has been terminated, no case is less serious than the other to the concerned employee, it admits of no debate that some labour disputes have more serious repercussions on the national economy than others. These ought to be treated with the seriousness that they deserve. Disputes that threaten the livelihood of a manufacturing concern for instance or the possible liquidation of a bank, cannot be placed on the same footing with the termination of the employment of a single domestic employee for instance. Each calls for a different degree of application and experience.
- The current structure of the Labour Court however does not recognize this common sense approach to disputes. Labour Court Presidents are expected to deal with a wide range of cases whose monetary jurisdiction range from the minimum wage to millions of dollars, payment of which under a court order, may cripple the business concern. They are expected to devote equal time and consideration to all the cases that come before them.
- It is my wish to see the Labour Court re- structured in a way that will enhance justice delivery in the settlement of labour disputes. I hope that the revision of the Constitution will take into account real issues that beset that court and provide for a framework that will lead to a positive re-structuring of that court and an in built mechanism that will separate labour disputes according to the degree of gravity of the dispute, as has been done to all other civil claims resulting in the creation of magistrates courts for less serious claims and the High Court for more serious claims.

Before I turn to the High Court, allow me to recognize the outstanding performance of Justice Maxwell Takuva when he was the sole judicial Officer in charge of the Labour Court in

Gweru. During the course of 2012, he heard and completed 149 appeals, 7 review applications and 25 other applications, making a total of 181 completed matters. His achievement becomes outstanding if his performance is compared to the rest of his counterparts. The other 12 Presidents of the Labour Court country-wide completed a total of 634 matters, averaging 53 cases per each President. I am informed that arithmetically, Justice Takuva was 248% more efficient than his colleagues during the course of 2012. To Justice Takuva I say “well done!” I hope you will continue to work as diligently in 2013 on the High Court bench as you did in 2012.

Turning now to the High Court,

- On 21 December 2012, four Judges were appointed to the High Court Bench. These are Justices Mafusire, Mangota, Takuva and Chigumba. These appointments were made following the appointment of Justice Zhou on 3 May 2012.
- I welcome the five Judges to the High Court Bench and again wish them a successful career as Judges of the High Court. The five Judges come from diverse backgrounds and their past experiences can only add value to the High Court Bench.
- The appointment of the additional judges in the High Court comes at a time when there is a general increase in the number of cases filed with the High Court. A table of statistics relating to all the courts shall be attached to a copy of my speech that will be posted on the Judicial Service Commission website immediately after this ceremony.
- The table of statistics will show that there has been a steady increase in the number of civil suits filed with the High Court from 2009 to date. The table shows that a total of 6 599 cases were filed in 2009 at the High Court in Harare. The number grew to 9 576 cases in 2010. In 2011 the number of filed cases again rose by more than 3000 cases

to 12 758. In 2012, the year under review, a total of 14592 cases were filed. There was a marked slow rate of growth towards the end of 2012. The possibility is that the slowed growth was due to the fact that in September 2012, the monetary jurisdiction of the magistrates courts was increased from \$2 000 to \$10 000-00, thereby probably shifting quite a number of potential cases from the High Court to the magistrates' courts.

- While the increase in the number of cases filed with the courts reassures us that the courts remain the forum of choice for dispute settlements, the increase in the volume of work can only have the effect of placing an additional burden on the judges and support staff whose numbers still remain low despite the recent appointments.
- A positive development in the High Court during the course of the year 2012 that I am particularly happy to report on was the successful development of a home-grown electronic case-tracking system in the civil registry of the High Court at Harare. The full details of the system shall be posted on the Judicial Service website in due course.
- Currently, I am electronically informed on a regular basis on the number of cases filed in the High Court and the movements or lack of it in any one of the cases that was filed from 2012 and to date. Data-capture for cases filed in 2011 backwards continues.
- For all those cases filed in 2013, the Registry now scans the pleadings and letters filed and immediately creates an electronic copy of these. What this means in simple terms is that upon the filing of a suit in the High Court at Harare, an electronic copy of the record of the matter is simultaneously created. This must be sad news to all those unethical lawyers and litigants who used to request our officers to backdate pleadings, for a fee of course. To these lawyers, I say, “you may continue to request our officers to backdate your pleadings but the date the pleading was scanned cannot be backdated

as I have been assured that the scanner does not take bribes, even from lawyers!” I am also informed that with the simultaneous creation of an electronic copy of any document upon its filing, the destruction of records or key documents in any record is again no longer profitable business for our clerks. Endless copies of each filed document can be printed from the electronic copy.

- I hope you will all understand why I have requested the Judicial Service Commission to securely guard and insure the scanning equipment!

On a more serious note however, I wish to acknowledge with gratitude the support that we in the judiciary have received from the Ministry of Finance which has enabled us to realize some of the objectives that we set out for ourselves. It is however my wish to see greater support from Treasury to enable us to procure a court building for the Labour Court not only in Harare but in all the centres that it operates from. The current premises accommodating the Labour Court in Harare continue to be a source of embarrassment to me as Chief Justice. In Bulawayo, the Labour Court nestles next to the magistrates’ court in Tredgold Building whilst in Gweru, it operates from rented premises.

Whilst I appreciate the support that we have received from Treasury during the course of 2012, I cannot resist the temptation to draw attention to the conditions of service of all members of the judicial service.

- Conditions of service for judges of the Supreme and High Courts and presidents of the Labour Court in the form of motor vehicles remain unfulfilled since 2009. The Constitution of Zimbabwe prohibits the diminution of the conditions of service of a judge during his or her tenure of office. The breach of the Constitution by the

Executive has been brought to the attention of the authorities on more than one occasion and it must be a very grave and compelling force that compels the Executive to perpetuate this state of affairs. We cannot be judges in our own cause.

- I am however grateful to the Government of Zimbabwe for expanding the mandate of the Judicial Service Commission under my chairmanship. This move in my view was a most welcome show of confidence and trust, by the Government and people of Zimbabwe; trust that the judiciary can manage its own affairs.
- In the past two years that we have been managing our own affairs, we have learnt, quite painfully at times, where the judicial shoe pinches most. We have also learnt how to ease the pinch and that after the pinch has been eased, we make better progress. It is on this basis that we respectfully call for greater fiscal room to be devolved to the judiciary as a self-governing body so that we can ease the shoe pinch much more. We have since learnt that a dedicated and focused approach to the administration of justice and a frugal approach to managing our finances can yield positive results.

Before I conclude, allow me to recognize and express my gratitude to the following offices:

- The Law Society of Zimbabwe
- The office of the Attorney-General
- The Zimbabwe Republic Police and
- The Zimbabwe Prison Service.

It is through our joint efforts and cooperation that the justice delivery system performs in a way that benefits our people. The judiciary on its own cannot deliver justice to the people of Zimbabwe without your combined efforts. Indeed the report from the Chief Magistrate indicates that there was close cooperation amongst all the key stakeholders in the resuscitation of the circuit courts country wide.

To the public, the different jurisdictions and legal mandates of our respective offices are at best blurred and at worst non-existent. In practical terms and in reality, these legal distinctions are not important. When a man has been in remand prison for more than 11 years without trial, it ceases to be important to any one which of our various offices is delaying the trial. The justice delivery system as a whole would have failed.

In my view, we must all adopt the attitude that in the system, each office is like in the biblical sense, its brother's keeper. The faults of the prosecutor can be visited on the magistrate and *vice versa*. The public expects us all not only to perform as one body but they hold all of us accountable if a case drags on without end or if there is a perception that justice in the matter has been compromised or purchased.

In my further view, the same approach should also dictate how our respective offices view and combat corruption within the justice delivery system. Members of the Law Society should not point fingers at us, laugh or shake their heads at the judiciary on account of our corrupt officials. Neither should the Police nor the Prison Service. In turn, it does not assist anyone if we in the judiciary were to compare the levels of corruption within the judiciary against those in the Police, Prison or Attorney- General's office and boast that ours is much better. One corrupt official in the justice delivery chain taints the entire system and the result coming out of that system no matter how innocent the other players are. Therefore, individual or territorial efforts by each of our offices to combat corruption are unlikely to yield results. I

believe that we must all come together and collectively combat corruption in the justice delivery system if our efforts are to have any impact.

I also take this opportunity to acknowledge the assistance that we have received from the Royal Dutch Embassy in Harare. We have made significant achievements which would have been difficult and at times impossible, had the office not extended its hand. We now boast among other things of having a motor vehicle at each resident magistrates' courts, thanks to the assistance received from the Royal Danish Embassy.

I will now conclude.

Before I do, allow me just to make reference to just one issue that exercises my mind without presenting any immediate solutions.

A total of 48 cases have been set down in the criminal courts at the High Court in Harare.

- 47 of these are murder trials. The remaining one is a fraud case.
- The murder trials will include the trial of Milanzi and six others, accused of murdering Dr Christopher Mushonga during a robbery at his house in Harare on 18 June 2009.
- The trials will also include quite a number of instances of apparent domestic violence. In two different incidences, the accused persons are alleged to have sprinkled paraffin over the deceased before setting them ablaze. Both died from the injuries sustained. In another, the accused allegedly slit the throat of the deceased following an argument with her. She died instantly. In yet another, the accused stabbed the deceased in the chest with a kitchen knife. In yet another case, the accused is alleged to have struck the accused with a hoe handle in the ribs following a misunderstanding. She died from the injuries sustained.

- The issue that exercises my mind is the number of seemingly mindless murders that the High Court tries day in and day out.
- In most of the cases the disputes are triggered by trivial issues that could have been resolved otherwise.
- In my view, the incidence of violence, domestic or otherwise in our community is high. There must be a way of making our people respect the sanctity of human life that lies outside the court system.
- The existence of the death penalty in our system on its own appears not to be bringing in the desired result, that of deterring would be murders.
- I therefore call upon all leaders in the community to look into the issue and devise ways of minimizing the incidences of unnecessary deaths in their respective communities. As I have indicated above, the reasons for resorting to violence in most of the cases are fairly trivial and society must be trained on other methods of resolving their disputes, domestic, drunken or otherwise.

We in the judiciary also note that the nation may go to the polls this year. As the nation gears itself up for the elections, we add our voice to those who are calling for free and fair elections that are held in a violence-free atmosphere. Whilst the courts stand ready to hear cases relating to the forthcoming elections, it is my fervent hope that litigation if any, relating to the running of and the results emerging from the polls will be very little.

With these few remarks, I pronounce the 2013 legal year open.

The Court will now stand while Father Fidelis Mukonori of the Roman Catholic Church will lead us in prayer.

