

**SPEECH BY THE CHIEF JUSTICE
THE HONOURABLE GODFREY GUWA CHIDYAU SIKU
ON THE OCCASION OF THE OFFICIAL OPENING OF THE 2014 LEGAL YEAR**

Mr. Prosecutor-General and

Mr. Morris,

In keeping with our tradition, we gather here today to mark the beginning of the 2014 legal year. To us in the justice delivery system, the day on which we mark the official opening of the legal year remains the most significant date in our calendar. It is significant because it gives us an appropriate occasion during which we address the nation directly on matters concerning justice delivery.

It is an occasion during which we have to introspect and review the performance of the sector in general and of the courts in particular, during the preceding year.

We cherish the occasion, not because it gives us yet another chance to adorn our ceremonial robes, but because the occasion, in a very small way, is a symbolic and voluntary surrender of the judicial authority to public scrutiny. The marking of the day is an acknowledgement by the judiciary that judicial authority derives from the people of Zimbabwe and that the judiciary is in consequence thereof accountable to the people in its performance of the judicial function.

Before I proceed to address you on the performance of all the courts during 2013, allow me to observe in passing that one major development on the political front during 2013 was also of major significance to us in the justice delivery system. This was the adoption of a new Constitution for Zimbabwe in March 2013.

Apart from replacing the Lancaster House Constitution as the new Supreme law to be applied in all the courts and to be observed by all, the new Constitution has also reshaped us as a judiciary.

The Constitution vests the judicial function in the following courts:

1. The Constitutional court
2. The Supreme Court
3. The High Court
4. The Labour Court
5. The Administrative Court
6. The Magistrates' Courts
7. The Customary Law Courts; and
8. Other courts established by Parliament through an Act of Parliament.

The new Constitution has created a stand-alone Constitutional Court as the highest court in the land. The Constitution vests in the Constitutional Court original and appellate jurisdiction in all constitutional matters.

Whilst the new Constitution sets out the courts that make up the Judiciary, the specific function or jurisdiction of each court save, for the Constitutional Court, is to be found in Acts of Parliament enacted for this purpose.

A comparison between the old and the new Constitution reveals that the new Constitution has restructured the courts. However, let me make it clear that change in the structure of the courts has no bearing on the primary obligation of the courts, which remains essentially the same. Whatever the structure, mandate or level of any given court, each court has an obligation to give effective service to all litigants that seek justice from it. A court that fails to do so, defeats the reason for its existence. There is no principle of interpretation that leads one to infer that the Legislature ever intended to create an inefficient court. A structural defect of a court cannot therefore constitute a permanent excuse for inefficient service.

This then, Mr. Prosecutor General, Mr. Morris, ladies and gentlemen, is the theme of my address to you this year: **Effective Service Delivery.**

COURT PERFORMANCES IN 2013.

It is logical for me to start with the performance of the highest court in the land and to go down the list seriatim. This is not however to say that the performance of the various courts has been in that order. My address will show that the performance of some of the courts in the hierarchy have been most pleasing while that of others still pose some challenges.

THE CONSTITUTIONAL COURT.

As I have already stated, the Constitutional Court was established as a separate court by the 2013 Constitution and formally came into existence on 22 May 2013, the date of the publication of the Constitution.

It has an establishment of nine Judges who are all drawn from the Supreme Court.

The Constitutional Court, like its predecessor, has both original and appellate jurisdiction only in Constitutional matters.

At the beginning of the year, there were 30 outstanding Constitutional matters. These were all matters that had been brought under the repealed Lancaster House Constitution. I would want at this stage to mention that a sizeable proportion of these cases were land cases brought under the old Constitution and in which there has been little movement.

May I also digress further and add that generally, the non-prosecution of constitutional matters has been one of the major factors that has contributed to the backlog in the Constitutional court. It is an issue that needs to be addressed immediately.

The Registrar is currently working on a raft of measures that are intended to achieve the swift and smooth movement of constitutional applications and the Law Society and the Offices of the Attorney-General and Prosecutor-General shall be consulted on these before they are implemented.

The main aim of the reform is to stop litigants from approaching the court for ulterior motives, with no intention whatsoever of pursuing the matter to finality. The reforms will ensure that all approaches to the Constitutional Court are genuine requests to have a constitutional injustice redressed and the Constitution respected.

During the course of the year, a total of 81 new cases were received. Fifty of these eighty one cases were all received between June and September 2013, the period immediately before and immediately after the harmonised elections of 31 July 2013. Quite clearly the influx of cases was occasioned by the election.

Of the total one hundred and eleven cases that were in the Constitutional Court during the course of the year, twenty four have been completed.

In my view, whilst the disposal rate as compared to the work-inflow appears to be on the low side, it is too early to judge the performance of the Constitutional court as 2013 was a unique year for that court in three major respects.

1. It was the year when the court was set up and so there are no previous years to use in comparison;
2. It was the year when the nation adopted the new Constitution and the provisions of that Constitution have not been fully put to use. The harmonisation of other pieces of legislation with the Constitution and implantation of these laws may spawn little or no litigation at all or it may have the reverse effect. Only time will tell.
3. 2013 was an election year and there was quite a spate of election related litigation in the Constitutional court which will naturally not be repeated in 2014 and in subsequent non- election years. The workload may thus drop down to close to or to below the disposal rate. On the basis of the above, I accordingly reserve my judgment on the performance of the Constitutional court.

THE SUPREME COURT.

In terms of the new Constitution, the Supreme Court has been re-established as the final court of appeal in all non-constitutional matters. It is essentially a court of appeal with no original jurisdiction. Its membership has been increased from five to nine judges of appeal.

I would want to take the opportunity at this stage to welcome back from the Hague, Gwaunza JA and to congratulate Justices Hlatshwayo, Patel and Guvava on their appointment to the Supreme Court bench. These join the Deputy Chief Justice Malaba, Justices Ziyambi, Garwe, Gowora and I to make the full complement of the Supreme and Constitutional Court bench.

The Supreme Court hears all appeals from the High Court, and appeals on points of law only from the Administrative and Labour Courts. It also hears appeals from other tribunals and courts such as the Court Martial set up under the Defence Act and the Law Society Disciplinary Tribunal set up under the Legal Practitioners Act.

At the beginning of 2013, there were 233 appeals pending before the Supreme Court from all inferior courts and tribunals. An additional 289 appeals were filed during the course of the year making a total of 522 appeals for the year.

Of these, a total of 409 cases were finalised, giving the court a clearance rate of 78%.

This remarkable clearance rate together with the performance of the magistrate's courts which I shall detail later warms my heart as head of the judiciary. It adds to my conviction that with the right interventions, effective justice delivery is not a pipe dream. It is achievable.

At this rate of clearing the workload before the court, I envisage that by mid-year 2014, the Supreme Court shall be dealing with current appeals. This in my view is what the justice delivery system should be able to do at all levels. Justice should not be inordinately delayed at any level.

I therefore rate the performance of the Supreme Court during 2013 as pleasing. I am aware that this development has caught some legal practitioners flat-footed. They have openly complained that the Supreme Court, in breach of its own Rules, is now setting down matters too quickly.

THE HIGH COURT.

In July 2013, six additional judges were appointed to the High Court. I wish to congratulate Justices Matanda-Moyo, Ndewere, Tsanga, Tagu, Moyo, and Muremba on their appointments to the High Court. Mrs. Justice N. Moyo has since been posted to Bulawayo while the other five remained in Harare.

The workload in the High Court continues to increase. It is hoped that the appointment of additional judges will help to ease the backlogs that continue to dog this court in all divisions. The Judge President and I are considering strategies that will help ease the workload in this court. The substantial imbalance between the inflow and outflow of cases, in favour of the inflow at the High court, is cause of concern for me as head of the judiciary.

THE LABOUR COURT.

The observations that I have made in connection with the High Court apply with equal force to the Labour Court where four additional judges were also appointed in March 2013. These are Justices Maxwell, Manyangadze, Murasi and Kabasa whom I heartily congratulate on their appointment. Again it is too early to establish the impact of the appointment of additional judges to that court. The statistics at hand indicate that the inflow of cases to this court exceeds the disposal rate thereby making the existence of a backlog inevitable. Each year, more cases are being filed with the court than the number of judgments and orders coming out of that court.

I have on a previous occasion expressed my disquiet about the structure of the Labour Court which in my view contributes to the uneven flow of work in that court culminating in the unending backlogs. I remain of that view and also believe that the institution of arbitration that is in built into the procedures of

the Labour Court may need revisiting at policy level. Most of the appeals that are presented in the Labour Court and ultimately in the Supreme Court are against some of these arbitral awards that at times are outrageous and defy logic. Some of these awards bear little relationship to the state of the economy and the salaries that are being paid to the generality of the workforce. It appears to me that whilst the arbitrators are appointed by the Ministry of Public Service, Labour and Social Welfare on account of their experience in labour matters, these gentlemen and ladies require extensive professional development in matters regarding the computation of damages for breach of contract, which essentially is the law applicable upon the unlawful termination of employment contracts.

Like the High court, the performance of the Labour Court is a cause for concern to me as head of the judiciary and efforts will be made in 2014 to find solutions on how to bring down the backlogs in these two courts.

THE ADMINISTRATIVE COURT.

Since the amendment to the Lancaster House Constitution that saw the jurisdiction of the court to determine land cases ousted, the number of cases being filed in this court has been dwindling. The court is currently manned by only one judge.

At the beginning of 2013 it had 28 cases brought forward from the previous year. A further 100 cases were filed during the course of the year, making a total of 128 cases for the entire year. Of these 56 cases were finalized, giving the court a clearance rate of 43% which I believe can be improved upon.

THE MAGISTRATES COURT.

The performance of the magistrates' courts continued throughout 2013 to exceed my expectations. If you recall, in my address last year I publicly commended the Chief Magistrate and his team for a job well done for reducing the backlog from 45 000 cases in January 2012 to 10 000 as of November of that year. I do so again.

I am happy to report that the magistrates' courts across the whole country have now completely eradicated the backlog that had become a characteristic of that court for years. The magistrates' courts are now current and further like the Supreme Court, exhibit the capacity to deal with all the cases that are brought to that court in the course of the year. By way of example, during the course of 2013, the courts completed a total of 85 008 criminal trials against an inflow of 82 383 cases for the whole year. (The other 2 613 cases were from the cases that had been brought forward from the previous year.)

What makes this achievement commendable is that it was achieved against a backdrop of reduced manning levels and un-improved conditions of service for our magistrates. The magistracy like all other categories of staff in the Judicial Service have been affected by the recruitment freeze imposed by Treasury for the past three years since the Judicial Service Commission took over the administration of the courts. Out of a total establishment of 250 magistrates, the service has been coping with 208 magistrates, five of whom are on secondment to various posts within the Judicial Service and are therefore not sitting in court.

Allow me Mr. Prosecutor General and Mr. Morris to note with concern the recent public announcement by the Civil Service Commission to the effect that the retention allowance that was being paid to all our magistrates has been ceased until further notice. We in the Judicial Service Commission are currently engaging all stakeholders to ensure that this development does not have the effect of reversing the gains that we had made in reducing the backlog in the Magistrates Court.

ACKNOWLEDGEMENT.

Let me hasten to acknowledge that the success story that has been written in the magistrates' court would not have been possible without equal dedication to duty and cooperation from the Zimbabwe Republic Police, the office of the

National Prosecuting Authority and the Prisons and Correctional Services who I also wish to congratulate for their efforts during the course of 2013. Together, you have managed to turn round the operations of our lower courts.

Despite limited resources, as a sector, the justice delivery sector performed beyond my expectations and i am happy to report as such to the nation.

STATISTICS.

It is the usual practice that in my address I give you a detailed breakdown of the number of cases that were filed in each court and the status of such cases.

I have not done so for the sake of time but these are available and are attached to my speech which is available on the website of the Judicial Service Commission. Hard copies of the speech with the attachments shall be made available to members of the press.

CHALLENGES.

I have in this address dwelt more on the performance of the courts than on the challenges that we continue to face in the sector. The challenges that we have enumerated during past addresses remain. These include severe under-funding and unattractive conditions of service for all members of the Judicial Service as well as unfulfilled conditions of service for all judges.

UNFULFILLED CONDITIONS OF SERVICE FOR JUDGES.

We have on other occasions pointed out that it is unconstitutional to reduce the conditions of service for judges while they are still in office. This serious breach of the Constitution persists to this date but, we remain hopeful that our concerns shall be addressed as soon as the fiscal space allows.

COOPERATING PARTNERS.

In the meanwhile we wish to acknowledge with sincere gratitude the assistance we have received from our cooperating partners. With assistance from the Royal Danish Embassy Office in Zimbabwe and from Plan International, we have completed construction of four pre-fabricated courthouses at Guruve, Murehwa, Mutoko and Tsholothso. Two other constructions at Norton and Esigodini are almost complete with plans to construct a further 30 within the next two years well under way. We believe that in addition to working hard to clear the backlogs in the courts, we should also make access to justice attainable by the bulk of the populace that utilises our lower courts, hence our thrust in improving the infrastructure in the magistrates' courts.

PRAYER.

As we open the 2014 legal year, we pray that the fortunes of our nation will improve and that the few initiatives that we in the justice delivery sector initiated in 2013 will be fully funded in 2014 for the benefit of the citizenry which turns to us for justice, one of the cornerstones for human and indeed national development.

With these few words, I now pronounce the 2014 legal year open. May we all stand up as **Father Mukonori** of the Roman Catholic Church leads us in prayer.

Court Statistics 2013

Superior Courts(January – November 2013)

Constitutional Court

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
30	81	111	24	87

Supreme Court

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
233	289	522	409	113

High Court

	Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	4893	10455	15348	8047	7301
Civil	3308	14457	17765	10398	7367

High Court

Criminal Appeals

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
3293	1789	5082	1171	3911

Harare

Bulawayo

Appeals dismissed by the Registrar:

815

200

Appeals finalized by the Court:

75

81

High Court

Criminal Reviews

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
1444	6979	8423	4415	4008

High Court Civil Appeals

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
2719	961	3680	2208	1472

Harare

Bulawayo

<i>Appeals dismissed by the Registrar:</i>	2061	90
<i>Appeals finalized by the Court:</i>	27	30

Labour Court

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
2271	2095	4366	2090	2276

Administrative Court

Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
28	100	128	56	72

NATIONAL SCENARIO

	Cases brought forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Constitutional Court	30	81	111	24	87
Supreme Court	233	289	522	409	113
High Court Civil	3308	14457	17765	10398	7367
High Court Criminal	4893	10455	15348	8047	7301
High Court Civil Appeals	2719	961	3680	2208	1472
High Court Criminal Appeals	3293	1789	5082	1171	3911
High Court Criminal Reviews	1444	6979	8423	4415	4008
Labour Court	2271	2095	4366	2090	2276
Admin Court	28	100	128	56	72
TOTAL	18219	37206	55425	28607	26818

Magistrate Courts (January – November 2013)

Regional Courts

	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Central Division	91	673	764	748	16
Eastern Division	652	2301	2953	2708	245
Western Division	166	591	757	685	72

Harare Province

	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Harare					
Criminal	941	16453	17394	16528	866
Civil	330	21880	22210	21763	447
Domestic Violence	53	1855	1908	1821	87
Total annual no. of cases	1324	40188	41512	40112	1400

Manicaland Province

	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Manicaland					
Criminal	479	8760	9239	9019	220
Civil	99	2083	2182	2140	42
Domestic Violence	34	708	742	736	6
Total annual no. of cases	612	11551	12163	11895	268

Matabeleland Province

	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Matabeleland North					
Criminal	727	8808	9535	9027	508
Civil	282	8336	8618	8224	394
Domestic Violence	34	708	742	736	6
Annual	1043	17852	18895	17987	908

Matabeleland South Province

Matabeleland South	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	272	4789	5061	4927	134
Civil	2	1600	1602	1598	4
Domestic Violence	1	317	318	318	0
Total annual no. of cases	275	6706	6981	6843	138

Mashonaland Central Province

Mashonaland Central	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	392	8258	8650	8536	114
Civil	212	4751	4963	4843	120
Domestic Violence	45	825	870	860	10
Total annual no. of cases	649	13834	14483	14239	244

Mashonaland East Province

Mashonaland East	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	358	6167	6525	6444	81
Civil	315	5794	6109	6045	64
Domestic Violence	38	1034	1072	1066	6
Annual	711	12995	13706	13555	151

Mashonaland West Province

Mashonaland West	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	601	8868	9469	9271	198
Civil	97	3807	3904	3787	117
Domestic Violence	23	962	985	960	25
Total annual no. of cases	721	13637	14358	14018	340

Masvingo Province

Masvingo	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	355	7170	7525	7284	241
Civil	147	5510	5657	5521	136
Domestic Violence	16	705	721	708	13
Total annual no. of cases	518	13385	13903	13513	390

Midlands Province

Midlands	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Criminal	577	9545	10122	9831	291
Civil	34	6329	6363	6339	24
Domestic Violence	6	536	542	538	4
Total annual no. of cases	617	16410	17027	16708	319

NATIONAL SCENARIO

Overall criminal cases

National Scenario Criminal cases	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Regional Courts	909	3565	4474	4141	333
Provincial Courts	4702	78818	83520	80867	2653
Total (National)	5611	82383	87994	85008	2986

Overall Civil cases

National Scenario	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Civil cases	1518	60090	61608	60260	1348

Overall Domestic Violence cases

National Scenario	Cases Brought Forward	New Cases	Total Cases	Total Cases Finalised	Total Cases Pending
Domestic violence	244	7908	8152	7954	198