

**SPEECH BY THE CHIEF JUSTICE  
THE HONOURABLE GODFREY GUWA CHIDYAUSSIKU  
ON THE OCCASION OF THE OFFICIAL OPENING OF THE 2015  
LEGAL YEAR ON 12 JANUARY 2015**

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**Mr Morris and Mr Prosecutor General:**

Allow me to recognise and acknowledge the presence of -

Honourable Acting President and Minister of Justice, Legal and Parliamentary Affairs, Cde E D Mnangagwa;

Honourable Mrs Justice Makarau, Judge of the Constitutional and Supreme Court and Acting Secretary for the Judicial Service Commission;

Honourable Minister of Provincial Affairs for Harare Province, Ms M Chikukwa;

Honourable Judges of the High Court, Labour Court and Administrative Court;

Secretary for Justice, Legal and Parliamentary Affairs, Mrs V Mabhiza;

His Worship the Mayor of Harare, Mr B Manyenyeni;

Commissioners of the Judicial Service Commission and the President of the Law Society;

Deputy Commissioner General of Police, Commissioner W.L. Sibanda;

Deputy Commissioner General of Prisons – Commissioner M.N. Chihobvu;

**Deputy Chairperson of the Law Development Commission, Mr J B Zowa;**

**Chairperson of the Zimbabwe Human Rights Commission, Mr E Mugwadi;**

**Acting Clerk of Parliament, Mr K Chokuda;**

**Representatives of all Judicial Service Commission Co-operating Partners;**

**All magistrates here present; and**

**Members of the Legal Fraternity:**

**It is that special time of the year again when we in the justice delivery system gather together to review our performance during the past year, celebrate the resolution of challenges overcome and identify those challenges that still need to be tackled in the coming year. The occasion of the official opening of the Legal Year, which we have gathered to witness today, gives me that most cherished opportunity, as head of the Judiciary and Chairperson of the Judicial Service Commission, to speak to the nation at large on matters that concern the operations of the courts.**

We in the Judiciary remain cognisant of the fact that judicial authority is derived from the people of Zimbabwe, to whom we are accountable for our performance as judicial officers. We therefore also use the occasion of the official opening of the Legal Year to give a public account of our performance.

## **2014 UNDER REVIEW**

Before I proceed to give an account of how each of the courts in the land performed in 2014, there are two events that occurred during the 2014 legal calendar that I wish to comment on.

During the course of the year the National Prosecuting Authority Act [*Chapter 7:20*] was assented to by the President and this had the effect of giving life to the National Prosecuting Authority of Zimbabwe in compliance with *section 258 of the Constitution of Zimbabwe*. Mr Johannes Tomana was appointed as the very first Prosecutor General of Zimbabwe. May I, on my own behalf and on behalf of the Judicial Service

Commission, the Judiciary and indeed the entire Judicial Service, congratulate Mr Tomana on his appointment. We wish him well in his new position.

I am informed that the National Prosecuting Authority Act was brought into effect on 2 January 2015, from which date Zimbabwe has an independent prosecuting authority for the first time.

Again during the course of the year under review, the Judicial Service Commission held the first ever public interviews for the appointment of Supreme Court and High Court Judges. I am confident that I speak on behalf of all members of the Judicial Service Commission when I say that we were overwhelmed by the response to the invitation to nominate persons for appointment, especially to the High Court Bench. For the six positions that we declared vacant in the High Court, a total of 46 qualified persons responded. We were impressed by the quality of most of the candidates.

Even if some of the candidates will not be appointed as High Court Judges, it is heartwarming in a way to know that Zimbabwe has such a good caliber of lawyers, practising and employed in different capacities and with some of them working and flying the Zimbabwean flag high in neighboring countries. It was extremely reassuring and gratifying to note that Zimbabwe has such a large number of legal practitioners, able and willing to serve their country as Judges of the High Court.

I also wish to mention in passing that the Judicial Service Commission reviewed its Strategic Plan during the course of the year. The process saw the Commission bringing together all its key stakeholders once again to have a relook at the priorities that the Commission should pursue up to 2016 when the Strategic Plan ends.

I take this opportunity to thank our co-operating partners and the consultants who assisted us through this process. It was a process during which our stakeholders validated almost all of

our strategic priorities and encouraged us to pursue these strategies with renewed vigor as we aim to improve on justice delivery to the people of Zimbabwe.

This then brings me to the performance of the courts during 2014.

Before I deal with each court, allow me once again to express my disquiet over the conditions of service of all judicial officers. Our magistrates and judges and all those who support them need to be adequately remunerated. This is not only desirable but the Constitution provides for that. I am on record as saying that a judicial officer who is not appropriately housed and has no reliable transport to and from court is most vulnerable and liable to be compromised. I am still of the same view and plead with the powers that be to assist us to curb corruption in the justice delivery chain by improving on the conditions of service for all judges, magistrates, the police, prisons officers and prosecutors alike.

## **THE CONSTITUTIONAL COURT**

**During my address at the official opening of the 2014 Legal Year, I indicated that the Constitutional Court had received a total of 81 cases for the year 2013, of which 58 were election related. It was my hope then that, after the elections of July 2013, the number of constitutional cases filed with the Court during 2014 would decrease. I spoke too soon. In 2014 a total of 79 constitutional applications were filed with the Court. Only one of these was related to a by-election in Chitungwiza.**

**It is therefore apparent that the number of constitutional applications filed in this Court is on the rise.**

**I wish to commend the judges of the Constitutional Court for doubling up on their efforts during the course of 2014. Whereas they completed 24 constitutional applications in 2013, in 2014 they completed 52 constitutional applications and reserved judgments in several other matters. This was**

indeed commendable, considering their additional workload in the Supreme Court.

My concern, however, regarding this Court is that the law requires all the nine judges of the Constitutional Court to sit and determine each constitutional application irrespective of the nature of the application. This is notwithstanding that the same nine judges are also doubling up as Supreme Court judges, whose operations I shall detail shortly. In my view, some of the not so complex Constitutional cases should be dealt with by a Bench of less than nine judges.

As head of the Judiciary, I am of the view that the seven year period stipulated in the Constitution as the period when the Constitutional Court and the Supreme Court will have separate judges may need to be revisited if our system is to achieve the effectiveness that I consider as desirable.

The set down date in constitutional applications has been less than a month from the date of the completion of the filing of

affidavits. Most of the delays experienced in the Constitutional Court occur between the filing of the application and the closing of the filing of papers.

## **THE SUPREME COURT**

Again I wish to commend my colleagues in the Supreme Court for another hard working year. Our records indicate that a total of 407 appeals were filed with the Court in 2014 as compared to 289 appeals that were filed in 2013. Of the 407 appeals filed in 2014, 333 were finalised.

I note with satisfaction that the Supreme Court is firmly on top of the situation as far as the hearing of all appeals is concerned. I, however, entertain some concern over the number of *ex tempore* judgments in the Supreme Court.

I am concerned over this development, because the Supreme Court is the final Court of Appeal on all issues relating to the interpretation of the law other than the Constitution. The importance of Supreme Court judgments providing precedents

cannot be over-emphasised, hence the need for written judgments.

It is also regrettable that, due to the upsurge of constitutional applications, now more than before both the Constitutional Court and the Supreme Court have found it necessary in many instances to determine a case and defer the handing down of the reasons for judgment to a later date. This is being done in an effort to speed up the delivery of justice in the face of the ever-mounting avalanche of cases. Informing litigants of the outcome of their cases with reasons to follow is a lesser evil than delaying both the determination and the reasons for judgment.

## **THE HIGH COURT BULAWAYO**

I am pleased with the performance of this court which has really turned the corner in taming the backlog in that court. Whilst I do not want to encourage judges in that court to rest on their laurels, I wish to commend all of them and the senior

judge in Bulawayo, Justice Mutema, for keeping the backlog in that court under check. Indeed, one of the top performing judges in the entire High Court for 2014, with 56 judgments under her belt, is Mrs Justice Moyo who is at the Bulawayo High Court.

I want, however, to urge and encourage the judges in Bulawayo to sharpen on the quality of their judgments, now that they have gotten the numbers right.

## **THE HIGH COURT HARARE**

The High Court at Harare performed reasonably well, with some judges performing extremely well while others still need to improve their performance.

In previous addresses I have highlighted the introduction of a case tracking system in the High Court. As head of the Judiciary, I find the case tracking system a very useful management tool, as it gives me a fairly accurate idea of the performance indicators of the Judiciary. The system can

generate a variety of reports, including the number of judgments handed down by each judge, as well as the number of cases finalised by each judge without the writing of a judgment. I must confess that the reports for 2014 have left me with very mixed feelings regarding the performance of Judges at the Harare High Court. As I have said earlier, some judges at Harare High Court performed extremely well and I am more than pleased with their performance.

In this regard let me mention Justice Mathonsi who, in the course of the year, wrote and handed down an impressive 72 judgments. His industry is revealed in its true dimensions if it is compared to the output of the least performing four judges, who had 2, 3, 6 and 11 judgments respectively for the whole year. The four of them wrote and delivered 33 judgments all in all for the year 2014, less than half what Justice Mathonsi handed down. The four Justices and Justice Mathonsi operate in the same environment and are subject to the same limited and unattractive conditions of service.

As head of the Judiciary I will accept no explanation that will seek to justify such low output as compared to what is possible within the same constraints. The Judge President of the High Court advises me that during the period under review he allocated to Justice Bhunu complex and protracted cases, which he handled with speed and efficiency. This is commended. I also note that Justice Kudya's performance must have been affected by the special assignment the Judge President of the High Court and I assigned to him which is yet to be completed.

In the same vein, let me also mention with commendation the performances of Justices Moyo, Chigumba and Matanda-Moyo who, together with Justice Mathonsi, were the top four performers in the entire High Court. To the four I say well done, and, even though I cannot reward you in any way, I wish to let you know that as your Chief Justice I am proud of your efforts. Your performance must serve as direct evidence to the Judicial Service Commission that the answer to taming the

backlog in the High Court is not necessarily the declaration of more vacancies in that court but in appointing industrious judges like you.

Simple mathematics informs me that if all the judges in the High Court applied themselves like these four, there would be no backlog in that court.

For the record, may I also mention that amongst the top four performers three are women judges, proving that hard work and gender have no corresponding relationship. Hard work is a personal choice.

The fifth top performer was Justice Hungwe. This is a remarkable turnaround, because over the years Justice Hungwe's performance has been a cause for concern. He and I have had conversations over the issue. I am delighted that the conversations have had a positive outcome. Keep it up judge.

I am sure 2015 will see an improvement on the 2014 performance. The case of Justice Hungwe's performance buttresses my contention that diligent application by the judges could be the answer to taming the backlog in the High Court.

## **THE LABOUR COURT**

The pattern that emerged from the High Court statistics is repeated in the Labour Court. Some judges performed extremely well in terms of numbers, although the number of one page judgments was usually high in the Labour Court. Other judges of the Labour Court could have done better. I must commend the newly appointed judges of the Labour Court for their pleasing efforts as compared to their seniors whose performance can be improved.

Of particular concern to me is the performance of the court at Gweru. The output at that court can be improved upon as it used to be one of the best performing courts, leading to my

public commendation of Mr Justice Takuva in 2013 for his outstanding performance in 2012 when he was the sole judicial officer manning that station and the backlog was zero. Since Justice Takuva's departure from Gweru, the backlog has risen and continues to rise steadily, and is now in excess of 200 cases, leading to a request for a second judge for that station. It is quite clear to me that the backlog at Gweru can be tamed by improved performance and not an increase in the number of judges.

I have gone into some detail regarding the performance of the superior courts, including mentioning the names of those who have given their best during the course of the year. I have done this deliberately to mark my respect for hard work and effective justice delivery. While I believe that judicial officers are entitled to decent conditions of service and must demand these as of right, I equally believe that judicial officers must earn their conditions of service. Constitutional provisions that protect judges from removal from office, while necessary to

safeguard the independence of judges, should not be a cloak behind which to hide inefficiency and underperformance by judicial officers. In future, it may be necessary to appoint all judges on probation before confirming their appointments in accordance with the Constitution.

## **THE MAGISTRATES COURTS**

I have indicated in previous addresses that the Magistrates Courts have managed to reduce the backlog of **49 000** cases down to just over **2 000** without any increase in the number of magistrates. The magistracy continues to maintain that state of affairs. I am delighted that that situation continues. A total of **190 359** criminal cases were received and **197 568** were completed. The court completed more cases than it received, eating into the previous backlog. The number of pending cases or backlog consists of fresh matters which are **2 947** for the whole country. A total of **90 103** civil cases were received and **90 599** were completed. There are only **658** pending civil cases for the entire country.

I am more than pleased with the performance of this court and I congratulate the Chief Magistrate and his team for another successful year. Magistrates managed to turn around the backlog in that court without any additional manpower or improved conditions of service, a spirit that I encourage the superior courts to emulate.

The delays that are still being experienced in the magistrates' court are due mainly due to delays in the completion of investigations. The delays between the arrest and the commencement of the trial are a cause for concern and have led to multiple constitutional applications for stay of prosecution on the grounds of delay in bringing accused persons to trial. I urge the Police and the National Prosecuting Authority to attend to this problem.

## **THE ADMINISTRATIVE COURT**

I mention this court last because there is nothing much that is happening in this court. It continues to be manned by one

judge, one registrar, one clerk and one executive assistant. In time, a policy decision will have to be made as to whether it is necessary to retain this court in its current state or merge it with other courts of a similar jurisdiction.

## **THE MESSAGE**

The message that I wish to convey in simple terms is this: The reality of the situation in Zimbabwe is that resources are limited. This is likely to remain so for a while. We should not simply throw up our hands into the air in despair. We should make the best of the unfortunate situation, namely to use the limited resources at our disposal to make our lives as Zimbabweans better. The magistrates have shown us the way by reducing their backlog from 49 000 to 2 000. They have demonstrated what can be achieved despite limited resources. All it takes is a change of attitude towards work and an application of one's self to the best of one's ability.

I, together with the Judicial Service Commission, will leave no stone unturned in fighting for the improvement of conditions of service for the Judicial Service. Recently, we have met with some measure of success in regard to the meeting of some of the conditions of service. We will be relentless in our effort to achieve more.

## **RELATIONSHIP WITH OTHER STAKEHOLDERS**

Before I conclude, I wish to acknowledge the important roles that are played in the delivery of justice by the Police, the Prison and Correctional Services, the National Prosecuting Authority, the Attorney-General's Office and members of the Law Society of Zimbabwe. In particular, I want to acknowledge the warm and cordial relationship that has developed between us in the Judiciary and the Law Society which was exemplified by the joint colloquium that we held in Vumba in November 2014. We were jointly concerned about improving the quality of the service that we offer to the public by robustly engaging in a debate whether or not Zimbabwe should revert to a

divided profession. I found the coming together of the Bench and the Bar in that debate not only refreshing but an example of how we can work together for the good of justice delivery in the country.

With these few remarks, I declare the 2015 Legal Year open.

May we all rise as Reverend Murefu of the Apostolic Faith Mission leads us in prayer.

(After the prayer)

**COURT IS ADJOURNED.**