

## **SPEECH BY THE CHIEF JUSTICE**

**THE HONOURABLE MR JUSTICE GODFREY GUWA CHIDYAUSIKU**

**ON THE OCCASION OF THE OFFICIAL OPENING OF THE 2016**

**LEGAL YEAR.**

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Mr Attorney- General,

I recognise the following dignitaries who have graced this occasion:

The Minister in the Vice President's Office, the Honourable C. C. Sibanda

The Minister of Provincial Affairs for Harare Province, the Honourable Miriam Chikukwa;

The Prosecutor -General, Mr J Tomana,

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

Deputy Attorneys- General here present and the Deputy Prosecutor General,

Secretary for Justice, Legal and Parliamentary Affairs, Mrs V Mabiza,

His Worship, the Mayor of Harare, Engineer B Manyenyeni,

The Chairperson of the Human Rights Commission, Mr E Mugwadi,

The Deputy Chairperson of the Law Development Commission, Mr B Zowa

Commissioners of the Judicial Service Commission,

Deputy Commissioner Matibiri and Deputy Commissioner Shambare, of the Zimbabwe Republic Police;

Deputy Commissioner General of Prisons and Correctional Service,

Deans of the Law faculties at the Universities of Zimbabwe, Midlands State and Great Zimbabwe,

The Principal of the Zimbabwe Judicial College, Mr Shana

The Chief Magistrate Mr. Guvamombe and all magistrates here present,

The President of the Law Society, Mrs V Nyemba and members of the profession here present,

Members of the media fraternity here- present

Ladies and gentlemen,

Today marks the official opening of the 2016 Legal Year. I wish to take this opportunity to thank all of you who have gathered here today to witness the occasion.

Before I proceed much further with my address, allow me,

**Distinguished guests, ladies and gentlemen,**

on behalf of the Judiciary, the Judicial Service Commission and indeed on my own behalf, to congratulate Advocate Prince Machaya on his appointment in February 2015 as the Attorney-General for Zimbabwe. We in the judiciary and judicial service believe that this was an appointment that was well-made and was well deserved. We wish you well Mr Attorney in your new office and pledge our unreserved support as we all strive to uphold our Constitution and to enhance effective justice delivery in our courts.

I also wish to take this opportunity to thank all the key players in the justice delivery sector for a very congenial and fruitful 2015. We enjoyed cordial relationships and close collaboration with all the key players in the sector and it is my fervent hope that this close

cooperation will be the mark of all our relationships henceforth. I note with some degree of satisfaction that all the key- players are represented at this gathering, again symbolising our unity in justice delivery.

**Mr Attorney,**

All the key players in the justice delivery system are autonomous entities, who are not subject to the control of any person or authority in the discharge of their respective mandates. Our respective independence and statutory autonomy should however not stand in the way of close collaboration and cooperation within the sector. I believe that there is wide scope for greater collaboration within the sector. After all, our independent efforts and operations converge at the courts are intended to enhance effective justice delivery. It therefore makes sense that we must voluntarily come together more often than not to compare notes and coordinate our joint efforts.

Allow me then **Mr Attorney**, to say a few words on each of the key players in the justice delivery sector and on how their functions impacted on the operations of the courts in 2015.

**The Zimbabwe Republic Police.**

The interface between the Zimbabwe Republic Police and the judiciary is an indirect one. After making an arrest, the police submit the docket of the case to the office of the Prosecutor –General where in some instances some of the investigated cases may fall off. It is only those cases that the office of the Prosecutor –General refers to court that we in the judiciary can account for. The dockets that are ready for prosecution but have not yet been presented to court may be many but do not constitute the backlog that we annually report on.

In my view, they should.

In real terms, there should be a correlation between the number of arrests made by the police and the workload of the criminal courts. It is this direct correlation that informed our realisation that the High Court Circuit courts are not clearing the backlogs of all the cases that the police are bringing to court through the office of the Prosecutor- General.

**Mr Attorney,**

You may have read in the press about my recent visit to Masvingo to assess the viability of setting up a permanent High Court in that city. That visit, and the strategy informing the decentralisation of the High Court to other provincial capitals was prompted by the realisation that the number of arrests by the police in the provinces is by far exceeding the rate at which the circuit courts are clearing the cases emanating from the provinces.

Allow me again **Mr Attorney,**

to make just one point regarding the relationship between the police and the judiciary. There is need for the greater sharing of statistics in matters of crime and prevalence of crimes to enable the judiciary to respond effectively by establishing enough courts to match the efficiency of the police in effecting arrests and investigating crimes.

Currently, there is no requirement for the Police to inform the judiciary of the number of arrests that they make over any given period. There is no requirement for the police to inform the judiciary of the backlog of cases that the police have at any given time. There is no common tracking system to establish where in the system, any report to the police by the citizenry is delaying, even after the accused person has been formally remanded by the court.

Later on in my address, I shall refer to the performance of the magistrates' courts. The statistics that I refer to in that part of my address reflect the cases disposed of by the courts. The figures do not reflect the cases that the police have completed investigating and are now awaiting trial. I am not privy to those figures.

I now turn to:

**The Prison and Correctional Service.**

**Mr Attorney,**

The relationship between the judiciary and the Prison and Correctional Service is a direct one. The department services courts directly and no criminal court can sit without a prison officer in attendance.

I am happy to report that during the course of the year there were very few reports of the department failing to service the courts for want of fuel. I wish to commend the department for a successful 2015 in servicing the needs of all courts country-wide efficiently.

**The Offices of the Attorney and Prosecutor General and the Law Society and Legal Aid providers.**

Legal representation in any court be it criminal or civil invariably is by one or more lawyers from these offices and organisations.

In another forum, I have had occasion to express my views on the standard of legal representation in this country. I find it a mixed bag. Some practitioners are very good and assist the court in quickly concluding the matters before the court. We in the Constitutional and Supreme Courts have found as a general rule that advocates from the side bar are better prepared and are of much assistance to the court. On the basis of such observations, we have

opened debate with the Law Society over the issue of whether or not the profession should remain fused or should be separated into advocates and attorneys.

I wish to take this opportunity to extend my gratitude to members of the Law Society who upon request from the Court, have offered their services as *amici curiae* in a number of cases.

As I stated earlier on, 2015 has witnessed the coming together of the key players in the justice delivery sector in a commendable way. I can only urge all of you to continue realising that working together, our collective institutional capacity is enhanced and we are able to deliver justice more expeditiously and effectively.

I also wish to commend our latest joint effort in coming together as a sector to collectively condemn corruption within the sector. I am aware that during the course of 2015, a number of meetings were held to strategize on how to combat corruption within the sector. It is up to us to not only combat corruption within our sector but to also lead by example. Let us continue to double our efforts at combating corruption.

Before I address you on the performance of the courts, Mr Attorney, allow me to note with profound sadness the passing on during the course of 2015, of the Honourable Mr Justice Andrew Mutema for whom we convened a special sitting of the court. I also wish to mention with sadness the passing on of the Acting registrar of the Administrative Court, Mrs Daisy Ntungakwa and four other members of the Judicial Service who were serving in various magistrates courts throughout the country. **May their dear souls rest in eternal peace.**

I now turn to the performance of the courts during 2015.

### **The Constitutional Court.**

Before I proceed to detail the performance of this court over the preceding year, allow me **Mr Attorney** to congratulate Justices Mavangira, Bhunu and Uchena on their appointment to the Supreme Court which also doubles up as the Constitutional Court.

To the judges I say, your hard work in the High Court and your performance at the interviews held in public in June 2014 resulted in your recognition and elevation to the highest court in the land. May your appointment serve as an impetus to those in the High Court and indeed to those within the entire judicial service to be diligent in their duties for future recognition. Seniority alone is no longer the only consideration for elevation within the judiciary. Performance is now also an important factor to be taken into account for promotion.

The number of cases filed with this court **Mr Attorney**, continues to increase steadily.

- In 2013, the year in which the court was inaugurated, eighty –one (81) cases were filed with the court.
- In 2014 a total of seventy-nine (79) constitutional applications were filed.
- In 2015 a total of one hundred and one (101) applications were filed. This is a 28 % increase.

In marking the opening of the 2015 legal year I commended the judges of the Supreme Court who also act as judges of the Constitutional court for a job well done. I wish to commend them once again for rising to the occasion in 2015. Whereas they completed 52 constitutional applications in 2014, in 2015 they managed to clear seventy- eight (78) cases. Again I mention that this feat was achieved in addition to and notwithstanding their additional workload in the Supreme Court.

The figures that I have just given out however are a cause for concern. Whilst the judges of the Constitutional Court are working as hard as they can, the inflow of work into that court continues to outpace their best efforts. Over the last three years, the Court has accumulated a small but growing backlog which now stands at one hundred and forty- six (146) applications. If one considers that at best, the Supreme Court can clear eighty (80) cases per year, we need more than one and half years just to clear the backlog that has accumulated to date.

We must therefore all double our efforts to ensure that this backlog does not become debilitating in the long run. On our part, we have flagged the need for the physical separation of the Constitutional Court from the Supreme Court. With constitutional court judges dedicated to constitutional matters only, we believe that the backlog may be arrested.

### **The Supreme Court.**

The number of appeals filed with the Supreme Court grew by 38 % between 2014 and 2015. Whereas four hundred and eighty- one (481) appeals were filed with the court in 2014, a total of six hundred and forty-six (646) appeals were filed in 2015.

The Supreme Court judges completed a record six hundred and ten (610) cases in 2015, compared to three hundred and thirty three (333) cases in 2014. I wish to commend them for this 83% increase in their out-put.

Whilst the Supreme Court managed to complete a record six hundred and ten (610) cases, the court issued eighty-one (81) written judgements during the course of the year. This roughly translates to one judgment for every seven (7) cases completed.

I am aware that there is concern mainly from the legal profession on the relatively few judgments coming from the Supreme Court and the fact that most cases are disposed of on the basis of court orders.

Whilst not downplaying the need for the Supreme Court to always give detailed reasons for its decisions, I clearly understand the predicament that the court finds itself in. It can issue more written judgments and thereby dispose of less cases or, alternatively it can continue to endeavour to carefully select those instances where a written judgment is imperative and those where the law is settled and an ex tempore judgment will suffice.

Again in my view, the situation can only be corrected by the physical separation of the Constitutional Court from the Supreme Court. Before that happens, it will be too onerous an expectation for the Supreme Court judges to complete many cases and write many judgments as well as discharge their Constitutional Court mandate concurrently. One of the desired results must yield.

### **The High Court.**

**Mr Attorney,**

On the same day that I swore in three new judges into the Supreme Court, I also swore into office six new High Court judges. These six judges were also selected as the best performers after interviews held in public in November 2014. The six justices are Justices Foroma, Charewa, Phiri, Chitapi, Mushore and Munangati-Manongwa.

The Judge President advises me that you have hit the ground running.

I say well done and welcome to the High Court. Your appointment seems to have coincided with renewed vigour in that court for during the year 2015, a record one thousand two

hundred and thirty seven (1 237) judgments were handed down by that court alone. This is a significant improvement on the previous year.

**Mr Attorney,**

you will recall that at the official opening of the 2015 legal year, I referred to what I termed unacceptably low performance by some judges of that court. I am happy to report that the performance of the High Court this year has exceeded my expectations and I wish to heartily congratulate judges of that court for the pleasing performance as evidenced by the number of judgments that they have returned during the course of the year.

The number of judgments handed down has in turn drastically reduced the number of complaints that I used to receive over delayed judgments. Let us all accept that this is the normative standard of an effective justice delivery system.

I regret to say **Mr Attorney** that as is to be found in any functional system, there are a few judges who may still need to introspect in light of the high performance by their colleagues generally.

Whilst the judges have been doing their best to clear the cases that are filed with the High Court Registry, my attention has been brought to the number of files that are dormant or semi- dormant in the High Court. In a report to me, the Registrar of the High Court has indicated that there are more than forty- thousand records that have been dormant for three or more years. These are matters that were filed as way back as 2002 up to 2012 but are lying idle with no one prosecuting the claim or applying to have it dismissed. Twenty thousand of the records are summons of applications that have not been served on the defendants or respondents. Some people may not know that they have been sued and are part of the High Court statistic even as I speak.

As we seek to amend the rules of court to deal with this problem, I wish to invite members of the profession and the litigating public to take note of the undesirable state of affairs and to assist us to come up with rules of court that will lapse such processes automatically if they are not prosecuted within a reasonable period after filing with the court. Currently there is no such rule.

On yet another positive note, the High Court marked a drop in the backlog of cases pending before that court. Whereas at the beginning of 2015 the High Court had a backlog of one thousand and two (1002) action matters, it closed the year with a reduced backlog of five hundred and four (504) cases. This translates to a 50% reduction in the backlog, a remarkable feat by all standards.

I am not quite clear on why this trend was not maintained in respect of application matters where there was a rise in the backlog from two thousand seven hundred and ninety-six (2796) at the beginning of the year to three thousand five hundred and seventy-eight (3578) at the close of the year. Application procedure is expected to be more expeditious than action procedures. I urge the Judge President to look into the matter with a view to addressing the situation.

**Mr Attorney**, again a pleasing result was posted in the criminal division of the High Court where the court opened with a total of two thousand nine hundred and ninety one (2991) cases and closed with 2836 cases. This was after it received eight thousand and forty –seven (8047) fresh cases for that year. All in all, the court completed a total of eight thousand two hundred and seventeen (8 217) criminal matters.

The court has also managed to reduce the backlog of appeals from the magistrates' courts. At the beginning of the year, the court had five thousand four hundred and eighty- seven (5 487) appeals pending. It then received a further one thousand seven hundred and fifty six (1 756) appeals during the course of the year to make a total of eight thousand two hundred and thirty

–four (8 234). Of these, the court completed five thousand and thirty four (5034) appeals leaving the backlog at two thousand two hundred and eighty- eight (2 288). This is a small backlog that can be cleared in one year if all records of appeal are prepared and forwarded to the High Court during the course of 2016.

All in all, as head of the judiciary, I am happy with the performance of the High Court in 2015 and commend the judges in that court. I urge them to keep up the good work in 2016 and beyond. I am confident that at the current rate of performance and with the added appointments, delays and backlogs in the High Court is a thing of the past.

At the beginning of my address I referred to the decision to further decentralise the High Court to all the provincial capitals which we currently serve as circuit courts. These are Masvingo, Hwange, Gweru and, Mutare. Due to the financial outlays that are necessary when setting up a permanent court, we will not be able to establish permanent High Court stations at all these centres in one fell swoop. What will inform when and where we are to set up a High first will include among other considerations, the statistics coming from each province and the availability of suitable infrastructure to house a High Court. This will also determine the number of judges to be deployed to each station.

**Mr Attorney-** I am also happy to report that the judiciary has readily embraced the current efforts by the Executive to ease the doing of business in Zimbabwe. To this end, we are working on the modalities of establishing a stand-alone Commercial law court, as a division of the High Court, to deal with commercial law matters speedily. We believe that the setting up of this court, with judges dedicated to commercial law court matters will not only ease the doing of business in Zimbabwe but will mark the beginning of specialisation in our High Court as a means of improving on overall efficiency.

We urge all stakeholders to assist us in realising this vision for our country in the not too distant future.

## **The Labour Court.**

Like in all other courts, the number of matters filed with the labour court has been increasing steadily over the past three years.

- In 2013, the court received a total of two thousand and ninety-five (2 095) cases.
- In 2014, it received a total of three thousand one hundred and eighty-five (3 185) cases and
- In 2015, it received a total of three thousand six hundred and fifty-nine (3 659) cases.

These figures are inclusive of appeals, reviews and applications.

Whilst the clearance rate of the court increased, the overall backlog went up by 4 % during the year under review. Each year, the court is managing to clear fewer cases than it is receiving and this scenario accounts for the increase in the backlog.

I urge the Senior Judge and all judges of the Labour Court to double their efforts and ensure that in 2016, they complete more cases than the court receives so that they start reducing the backlog. The High Court and the magistrates' courts have managed to do so and I am confident that they can do the same.

## **The Administrative Court**

There was an increase of 19% in the number of cases filed with the Administrative Court during 2015.

In 2014, a total of eighty-three (83) cases were filed with the court. In 2015, the number rose to ninety-nine (99).

The court maintained its position as the court that has just enough work to justify the appointment of a single judge. It completed a total of one hundred and ten (110) cases in 2015 as opposed to one hundred and nine (109) in 2014. It has also managed to reduce its backlog from thirty one (31) to twenty-six (26) cases.

### **The Magistrates Courts.**

During the course of the year, the performance of the Regional courts country- wide was outstanding. The courts opened the year with two hundred and thirty-three (233) cases pending. Country-wide, the courts received a total of three thousand six hundred and thirty-six (3 636) giving a grand total of three thousand eight hundred and sixty- nine (3 869) cases to be determined by the courts during that year.

Of these three thousand eight hundred and sixty- nine (3 869) cases, the courts completed three thousand seven hundred and twenty- four (3 724) closing the year with only one hundred and forty- five (145) cases pending. The eastern Division, which includes Harare regional Court, deserves special mention. It receives the largest number of cases due to the size of its catchment area. It managed to reduce its backlog from one hundred and thirty four (134) cases to ninety-six (96) cases at the close of the year.

To all of the regional magistrates in the Eastern Division, I say, well done and keep up the good work.

The provincial courts also performed very well during the course of the year under review and managed to keep the backlog at two thousand two hundred and twenty- nine (2 229) nationwide.

There is no backlog in civil cases in the magistrates' courts as all cases are set down as soon as they are ready to be tried. The court received eighty- seven thousand five hundred and

thirty six (87 536) cases during the course of the year. The court completed eighty-seven thousand one hundred and eighty-two (87 182) cases during the same year.

### **Hosting of the South and East Africa Judges' Forum Annual General Meeting and Conference.**

Before I conclude, I wish to register my appreciation to His Excellency the President of the Republic of Zimbabwe, Comrade R. G. Mugabe for agreeing to be the guest of Honour and to deliver the key-note address at the SAJF Conference which we, the judiciary in Zimbabwe hosted in August 2015. Whilst he could not attend in person, we cherish his gesture of delegating the task to the Vice President, who is also the Minister responsible for Justice Legal and Parliamentary Affairs, the Honourable E.D. Mnangagwa who eloquently delivered the President's speech.

I was particularly taken by the fact that His Excellency, the President exhorted all Chief Justices present at the conference to take charge and play a leading role in eradicating corruption within the judiciary and to come up with mechanisms to ensure that judicial officers remain accountable to the people. These are exhortations that as we go into 2016, I will take very seriously.

In conclusion I wish to thank all those who were directly and indirectly involved in the SACJF for a job well done. In this regard, I wish to single out Justice Makarau and her team from JSC and thank them for the exceptional organisational feat. You did us proud. We were all thrilled to know that we had raised the bar so high in hosting the function that other jurisdictions are thinking twice before they offer to host the 2016 AGM and conference.

I believe that all of us gathered here, working together, can raise the bar in matters of justice delivery to a level where other jurisdictions can only emulate.

With these few remarks, I hereby declare the 2016 legal Year officially open.

May we all rise as Bishop Trevor Manhanga leads us in prayer.

(After the prayer)

**COURT IS ADJOURNED!**