

# **JUDICIAL SERVICE COMMISSION**



**ADDRESS BY THE HONOURABLE MR JUSTICE  
PADDINGTON GARWE,  
CONSTITUTIONAL AND SUPREME COURT JUSTICE,  
ON THE OCCASION OF THE OFFICIAL OPENING OF THE  
2020 LEGAL YEAR; MASVINGO  
13 JANUARY 2020  
THEME: TRANSPARENCY AND ACCOUNTABILITY**

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## **Salutations.**

### **INTRODUCTION**

**Mr Zvekare and Mr Chuma**, it is yet again that time of the year when stakeholders in the administration of justice converge at this very important gathering to mark the commencement of the legal year. As stated during previous ceremonies, the objective of this event is to create a platform through which the Judiciary can account for its activities to the public- from which it derives its mandate- by stating its achievements and the challenges it faced in meeting its constitutional obligations in the preceding legal year. It is also a forum at which the Judiciary is afforded an opportunity to outline the plans for the next twelve months.

This is one of four ceremonies taking place simultaneously to commemorate the official opening of the 2020 legal year in this country. As I speak, the Chief Justice of Zimbabwe is presiding over a similar but bigger event in Harare whilst the Deputy Chief Justice is presiding over the event in Bulawayo. The Judge President of the High Court is in Mutare.

Before I proceed to give my address, allow me, to welcome you all, on behalf of the Judiciary and the Judicial Service Commission to this auspicious ceremony and to declare the **2020** Legal Year in Masvingo officially opened.

It is also appropriate at this juncture to welcome to Masvingo High Court the **Mr Justice Wamambo** who was recently transferred from Harare. I also wish to congratulate **Mr Justice Sunsley Zisengwe** on his recent appointment to the bench. It is my hope that his deployment to Masvingo together with **Justice Wamambo** will go a long way in enhancing the efficiency of this court and ensure that the backlog of cases will be kept under check. In the same vein I wish to acknowledge and indeed complement **Justice Mafusire** who was recently transferred back to Harare for the hard work he did during his tenure as

a judge at this Court. He together with the senior Judge of this station **Justice Mawadze** worked tirelessly to ensure that justice was dispensed in Masvingo with minimum delay.

Since its opening Masvingo High Court has always been manned by two judges. It is indeed pleasing to note that, as we move into 2020, it will now be manned by three judges. This development brings with it some positive advantages as the addition in numbers will obviously ensure that justice is not delayed as more cases will be dealt with and finalised without delay. This will also lessen pressure on the individual judges which will in turn allow them to do more research and to write quality judgements thereby developing our jurisprudence. It is not uncommon for two judges to disagree in a matter on appeal or review. In terms of the High Court Act, this may necessitate the appointment of a third judge. The presence of a third judge makes the work of the High Court much easier. I am therefore certain that the public, the legal fraternity and all stake holders will benefit immensely from the recent expansion in the complement of judges at Masvingo High Court.

**DISTINGUISHED GUESTS, LADIES AND GENTLEMEN,** you may be aware that it is now the practice of the judiciary to choose a

theme for the legal year. The choice of theme is done not only to ensure that the public has an appreciation of what goes on within the judiciary as we begin the new legal year but also to guide members of the judiciary on what is expected of them as they dispense justice to the people of this country. The theme for this year is “*Transparency and Accountability*”. The judiciary plays a critical role in the administration of justice of any country. This is so especially in a constitutional democracy like ours. It is the judiciary that is central in the settlement of disputes between citizens and between the State and its citizens. The judiciary carries with it a constitutional obligation to dispense justice without fear, favour or prejudice as provided for in **Section 164** of the Constitution of Zimbabwe. When it does so, it is necessary that such judicial power be exercised transparently and that the judiciary is held accountable for its actions in the discharge of its functions.

The concepts of transparency and accountability are separate but mutually inclusive. Unless there is accountability, transparency is of no value. In the same vein without transparency, it is impossible to hold public officials to account. These concepts are therefore two sides of

the same coin and are critical components of democratic governance. Transparency refers to availability of information and unfettered access by stakeholders and the public to full and reliable information on decisions and performance. Accountability on the other hand refers to mechanisms designed to ensure that judicial officers perform the duties required by their office in order to fulfil or further the goals set by the Constitution. It also connotes full disclosure on the use of public resources and the consequences of failing to meet stated performance objectives.

These **two** concepts therefore obligate the judiciary to provide full information to the public and justification for its performance. They obligate the judiciary to open itself to public scrutiny and, at the same time, present an opportunity to the public to demand accountability on its part. Judicial authority in Zimbabwe derives from the people. **Section 162** of the Constitution says so explicitly. To that extent therefore judicial officers are servants of the people. Public decision processes therefore ought to reflect the will of the people. The people of this country are therefore major stake holders in what happens in

courts. The courts must therefore, from time to time, account to the citizens on how they are performing their functions.

**DISTINGUISHED GUESTS, LADIES AND GENTLEMEN,** it is, in fulfilling the concept of transparency that the judiciary avails court rolls and cause lists to advise litigants, legal practitioners and the public on the matters that are being heard in court on a daily basis. Transparency requires that the judiciary avails courts close to the people so that the public has easy access to justice. It is for this reason that the Judicial Service Commission continues to decentralise the Magistrates' Court to every district and the High Court to every province. The Commission will in the current year continue to pursue these objectives. It is the right of every citizen of this country to be able to access justice as close to where they are located as possible. Where it is not possible to have a resident court, the policy of Judicial Service Commission is that there should be a circuit court in that area. Here in Masvingo I am aware that there is need to establish a permanent Labour Court to deal with labour matters in the province. It is not fair for the residents of this province to be made to travel to Harare or Gweru to access the Labour Court. This is an issue that the Judicial Service

Commission is seized with. As an institution we are actively looking for a building which can be renovated and customised into a Labour Court. I urge the local leadership in Masvingo, which includes the **Honourable Provincial Minister** and the Masvingo City Council, amongst others, to assist in this regard and avail suitable facilities to the Judicial Service Commission so that we have a permanent Labour Court in Masvingo. Meanwhile the Labour Court will continue to deal with matters on circuit when it visits the province once a term for two weeks. Obviously this is not sufficient.

On a somewhat related matter, it will be recalled that, exactly a year ago, I expressed dissatisfaction over the lack of suitable accommodation for all court staff at these premises. In particular, the need for additional office space to accommodate the office of the Master was highlighted. Due to ongoing efforts on the part of the Judicial Service Commission, construction of additional offices to accommodate the Sherrif's office is almost complete. This is obviously good news and should ease the challenge of office space that has bedevilled operations at this station since its inception.

In the Magistrates' Court, I am happy to note that every district in the province now has a resident magistrate. Structurally the courts are in good condition save for Chiredzi. Chiredzi Regional Court is in a state of dilapidation and requires a facelift. Chiredzi Provincial court was built using prefabricated material. This was done to provide a temporary structure during our times of need. The materials used in the construction were never meant to endure for eternity. Predictably, the structure has seen better days and is no longer in good condition. The rehabilitation of Chiredzi Regional Court and construction of a new provincial court under brick and mortar will be a priority for the Judicial Service Commission during the course of the year. I have been advised that Tongaat Hulett has offered to partner with the Judicial Service Commission in the rehabilitation of the regional court. This is commendable and I take this opportunity to publicly applaud the company for such a good gesture.

On a related matter, I am advised that there is heavy inflow of cases at Triangle which is still operated as a circuit court. Triangle at times receives more criminal cases than resident magistrates court like Chivi and Mwenezi. Triangle is serving **two** police stations namely Triangle

and Renco and four police bases at Sango, Mupapa, Samba and Mwenzi. Whenever the circuit court does not, for any reason sit, the police are forced to travel all the way to Chiredzi Provincial Court to have their matters dealt with. This is not conducive to the proper administration of justice and flies in the face of rights of access to justice and the concept of transparency. The Judicial Service Commission has now taken the position that Triangle circuit court be converted into a fully-fledged resident magistrates' court in the course of the year. I am also happy to announce that Triangle Limited has agreed to partner with Judicial Service Commission in the development of infrastructure that will house the court. This again is commendable and I take this opportunity to express our sincere gratitude to the company for this gesture.

The theme of transparency and accountability requires the Judicial Service Commission to open itself and its operations for public scrutiny. It necessarily means that the Judiciary must open itself to allow Zimbabweans to appreciate how the courts function. In this respect, in **2020**, the Commission will take the unconventional route to reserve a day on which members of the public will be allowed access

to the courts, not for purposes of litigating but to understand the functions of each court in terms of the law.

**DISTINGUISHED GUESTS, LADIES AND GENTLEMEN,** as already noted, the theme for this year is transparency and accountability. Whilst there is a clear imperative on the part of the judiciary to ensure transparency and accountability, there is also a corresponding obligation on legal practitioners, who are officers of the court, to exhibit the same. I say this for good reason. A trend has now emerged where legal practitioners file applications at this Court in circumstances where such applications should more appropriately be filed in Harare. Three such applications have been received by the court. In all three cases the legal practitioners representing the parties are domiciled in Harare. So are their clients. The events giving rise to the proceedings occurred in Harare. To enable the matters to be heard, the parties and their legal practitioners must travel all the way from Harare to Masvingo so that the court here can determine a dispute that took place in Harare. It is accepted that the High Court of Zimbabwe, wherever situated, has jurisdiction to entertain all suits and that such jurisdiction extends countrywide. However, the mere fact that parties

or their lawyers deliberately avoid filing their papers at the High Court in Harare, choosing Masvingo instead, may, in the minds of reasonable men, give the impression that there is a reason why Masvingo has been preferred over Harare. It may give the impression that Masvingo is preferred because a particular party, the applicant, is of the view that he or she will get a more favourable outcome here than in Harare. This, in my view is most undesirable and gives a wrong perception of the way the courts operate. It does not enhance transparency in the eyes of the public. I therefore urge parties and their legal practitioners to refrain from this obviously undesirable practice in order to foster transparency in the activities of the judiciary. The issue is one that undoubtedly requires further attention on our part.

Allow me **DISTINGUISHED GUESTS, LADIES AND GENTLEMEN**, to advise that we have set the **10<sup>th</sup>** of June of each year as the Judicial Service Commission day. The choice of the day was not accidental. The **10<sup>th</sup>** of June was the day, in **2010**, when the Judicial Service Commission, with its expanded mandate, came into existence after the promulgation of the **Judicial Service Act**. It marked the complete separation of the administration of the affairs of the Judiciary

from the parent Ministry of Justice Legal and Parliamentary Affairs. The declaration of **10** June out of all the other days of the year is therefore befitting. In **2020**, the date becomes even more relevant as it marks a decade of the Commission's existence.

It is in recognition of the theme of **Transparency and Accountability** that the Judicial Service Commission will commemorate the Judicial Service Commission day. This will, as already highlighted, be an open day during which members of the public and all stakeholders will be invited to visit court stations near their locations throughout the country to learn more on how the courts operate and to have a closer appreciation of the functions and duties of various offices within the structures of the Judicial Service Commission. This will include the offices of the Master of the High Court and the Sheriff of Zimbabwe. It will also present an opportunity to school and college leavers to understand the various career opportunities available in the Judicial Service Commission. The public will be permitted to ask questions on matters that concern these institutions and even to make complaints. I take this opportunity to urge the public in Masvingo to take advantage

of this day to learn more on how the courts function. You will get more information on this in due course.

Accountability **DISTINGUISHED GUESTS, LADIES AND GENTLEMEN**, requires that the judiciary must justify its work and decisions to litigants and the public. It requires that a judicial officer must give reasons in the form of a judgment for the decision reached. The giving of reasons by a court is not only fair but necessary to the litigants involved in the matter for them to appreciate why and how they won or lost the case. The giving of reasons provides a platform for the public to scrutinise and comment on court decisions. This no doubt enhances the administration of justice. The giving of reasons also allows litigants who may be aggrieved with the decision of a court to decide whether or not to exercise their constitutional right of filing an appeal against, or review of, the decision. The duty to give reasons is a constitutional imperative as it directly impacts on the constitutional right of citizens to a fair trial. I therefore call upon all judicial officers to ensure that reasons for decisions made are provided at all times to litigants and the public and that this is done as expeditiously as is

possible. Only in this way can we account to the generality of the people of this country.

**DISTINGUISHED GUESTS, LADIES AND GENTLEMEN,** the concepts of transparency and accountability play a crucial role of countering both public and private corruption, checking against excesses in the use of public power and ensuring a reduction in the abuse of discretion and reduction of political manipulation. This in turn increases public confidence in the integrity of judicial processes. These concepts are the antithesis of corruption. The fight against corruption is topical in this country and all stakeholders in the administration of justice must put their hands on the deck as they play their role in this fight. As the judiciary, our role is to adjudicate over matters that are brought before us including corruption-related matters. We are there to protect the rights of all citizens including even those facing criminal allegations. This is the essence of fair trial rights. It is important therefore that before arrests are made and suspects brought to court, thorough investigations are carried out by the investigating and arresting authorities. It is equally important that the National Prosecuting Authority is diligent and professional in its assessment of

dockets when it exercises its constitutional mandate of prosecuting matters in the country, so that only matters in which there is credible evidence are brought before the courts. The courts on their part must ensure that justice is dispensed as set out in **Section 164** of the Constitution which behoves the courts to apply the law impartially, expeditiously and without fear, favour or prejudice. The courts are the last bastion of the fight against corruption. A court that unnecessarily postpones matters or is slow in the delivery of judgments and sentences is an obstruction to the administration of justice.

The Judicial Service Commission has endeavoured to play its part in the fight against corruption through the provision of specialised anti-corruption courts in the provinces and special training of magistrates to deal with these matters. Here in Masvingo a specialised anti-corruption court was opened by the **Honourable Deputy Chief Justice** during the course of **2019**. I hope this court is living to expectation. I can also announce that a specialised anti-corruption court is being set up in the High Court. Judges who will man that court have since been identified in Harare and Bulawayo. It might not be possible, for now, for stations like Masvingo, where we have a smaller complement of judges, to have

such a court. It is expected however that all the judges at these stations have the experience, and are cognisant of their obligations, in dealing with corruption-related matters.

**DISTINGUISHED GUESTS, LADIES AND GENTLEMEN**, allow me now to share with you the statistics on the performance of the courts in the province during the period under review.

### **MAGISTRATES COURTS**

The magistrates' courts criminal section received a total of **8401** cases during the period under review. This figure is much higher when compared with the figure of **8190** received in 2018. In **2019** the courts completed a total of **8376** cases compared to 8153 cases completed in **2018**. The civil court on the other hand received a total of **7450** cases in **2018** and **6650** in **2019**. There was therefore a decrease in the number of civil matters filed in the civil court in **2019** as compared to **2018**. The total number of cases completed in the civil court for the province is **6684**, compared to the **2018** figure of **7566**. The civil court for the province was therefore much busier in **2018** than it was in **2019**.

The backlog of criminal cases as at **31 December 2019** was **321** whilst the backlog for civil cases stood at **138**. These figures suggest that magistrates have worked hard in containing the back log of cases in the province. I wish to congratulate the magistrate in charge of the Province, Mrs Gofa, and her team for a job well done. They are urged to keep up the good work.

## **LABOUR COURT**

As indicated earlier in my remarks, the Labour Court comes to Masvingo on circuit. The court sits on circuit once every term for **two** weeks. This translates to the Labour Court sitting in Masvingo for a total of **six** weeks per year. In **2019** a total of **50** cases were set down for hearing and **49** of these were completed. This is lower than the figures for **2018** in which **58** cases were set down and **57** completed. That notwithstanding, the completion rate of cases both for **2018** and **2019** is **98%**. This is an impressive performance by the Labour Court. I therefore congratulate the judges for such a good performance.

## **HIGH COURT**

The High Court started the year with **61 cases** in the civil court and received a total of **400** cases. During the course of the year the court completed a total of **393** cases giving a percentage completion rate of **85%**. As at **31 December 2019** the court had **68** cases pending. Whilst this suggest a rise in the back log by **7** cases, it is clear that the number of pending cases is under control.

The criminal division of the High Court started the year with **102** cases. It received **1084** cases, giving a total of **1186** cases. The Division completed **1084** cases leaving a balance of **102** cases as at **31 December 2019**. The percentage completion rate for that court is **91%**.

No doubt, the performance of the High court was also impressive and pleasing especially when regard is had to the fact that the court was, during the year, manned by only **two** judges. Now that an additional judge has been posted to Masvingo, expectations are that the performance as at the end of this year will even be better. I wish to congratulate the senior judge of the High Court, **Justice Mawadze** and his team, including the support staff for a job well done. Since its

opening, this Court has always performed very well and the expeditious delivery of justice is there for everyone to see.

## **CONCLUSION**

As I conclude, allow me, **DISTINGUISHED GUESTS, LADIES AND GENTLEMEN** to acknowledge and indeed express my gratitude to various institutions that have cooperated and partnered with us during the course of the year which has resulted in the successes I have referred to today. These include our parent Ministry. The Ministry of Justice Legal and Parliamentary Affairs, the Ministry of Finance and Economic Development, the Ministry of Public Works and National Housing, the National Prosecuting Authority, the Zimbabwe Republic Police, the Zimbabwe Prisons and Correctional Services, the Zimbabwe Anti-Corruption Commission, civil society organisations involved in the administration of justice and the donor community. These are key stakeholders who play critical roles in the administration of justice and without their cooperation and support the operations of the courts would be severely constrained.

Finally, it would be remiss of me to conclude my remarks without acknowledging the good work that is being done by members of the Judicial Service in the Province. They have done well; the courts cannot operate without them. I encourage you to keep up the good in the current legal year.

I thank all of you for attending this event today and for making today a memorable day. This is a very important day on the calendar of the judiciary and your presence makes it even more special.

Before this formal session comes to an end, I call upon **Reverend Mafondokoto** to lead us in prayer and to ask for God's blessings as we, yet again, commence the **2020** legal year. I request that we all stand for the prayers. Immediately after the prayer the court will then adjourn.

**I THANK YOU ALL.**