

# COMMERCIAL COURT RULES COMMITTEE

## HANDOVER SPEECH BY HON JUSTICE JOSEPH MARTIN MAFUSIRE

**BRONTE HOTEL, HARARE  
8 APRIL 2019**

The Honourable **Mr Justice Luke Malaba**, Chief Justice of Zimbabwe;

Members of the Commercial Court Rules Committee here present;

Members of the secretariat of the Judicial Service Commission here present;

All invited guests;

Ladies and gentlemen;

I greet you in the mighty name of our Lord Jesus Christ, Amen!

In terms of s 56 of the High Court Act [*Chapter 7:06*] the Chief Justice of Zimbabwe, after consultation with a committee appointed by himself, may make rules of the court for the regulation of all matters in relation to the proceedings of the court or any specialised division of the court, and in respect of any matter for which rules of court may in terms of the Act be made.

Honourable Chief Justice, Sir, in January this year you constituted myself and selected members of the legal fraternity into a special committee and tasked us to draft the Rules for the soon to be opened Commercial Court, a division of the High Court of Zimbabwe. By that act you reposed and demonstrated a great deal of confidence and trust in every one of us. It was a leap of faith by His

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Lordship because there were only two possible outcomes: success or failure. We chose the latter.

The members of the committee comprised myself as the Chairman;

**Mr Edwin Manikai**, a keen golfer, veteran commercial lawyer, co-founder and Managing Partner of the well-known commercial law firm Dube, Manikai and Hwacha;

**Mr Tinoziva Bere**, once a consummate and practising Marxist-Leninist, and probably still is, an ex-President of the Law Society of Zimbabwe, founder and Senior Partner of the Mutare based law firm Bere Brothers;

**Mr Addington Chinake**, a self-made and shrewd businessman, veteran commercial lawyer, jazz fanatic who in the middle of drafting the Rules could not resist the Jazz Invitation that was happening in South Africa. He is the Senior Partner of one of the oldest law firms in Zimbabwe Kantor & Immerman;

**Mr Sithembinkosi Msipa**, a scholar and very senior member of the secretariat of the Judicial Service Commission who currently occupies the position of Deputy Secretary;

**Mrs Renika Dzikiti** a self-made administrator who is currently the Deputy Registrar of the High Court of Zimbabwe and stationed at Masvingo.

Honourable Chief Justice, Sir, it is our collective pleasure, as members of the Commercial Court Rules Committee, to announce to His Lordship with joyfulness that the task for which the committee was constituted and appointed has been completed. There is now in place a draft of the High Court of Zimbabwe (Commercial Division) Rules which the Committee is confident to hand over to His Lordship for the further processes required for promulgation into law. At the outset, the Committee wishes to express its appreciation on the pioneering work carried out by some members of the Judicial Service Commission Secretariat in cobbling the foundational draft Rules.

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Hon Chief Justice, Sir, the Commercial Court Rules have been put together against a certain set of values that underpin the establishment and operation of the Commercial Court. This special division of the High Court is designed to improve the ease of doing business in line with the criteria set by the World Bank. It is the tool or organ by which the Judiciary will contribute, in its own small way and sphere of operation, towards the national effort in attracting local and foreign direct investment.

The Committee considers that the core function of the Commercial Court is the expeditious resolution of commercial disputes according to international best practices to enhance efficient justice delivery.

The Committee considers that some of the core attributes of the Commercial Court should be:

- (1) the reduction and simplification of processes;
- (2) the curtailment and minimization of costs and time;
- (3) the full integration of electronic case management systems;
- (4) the complete digitalisation of records;
- (5) across the board training;
- (6) enhanced professionalism and increased efficiency;

To align the new Rules to the above set of values, the Committee decided to be innovative. It adopted some interesting interventions designed to provide solutions to some recurrent problems currently bedevilling the Civil Division of the High Court. Below is a snapshot of the innovative interventions:

- 1 Except in exceptional circumstances, the resolution of a commercial dispute should be completed in ten months, certainly not beyond twelve months.

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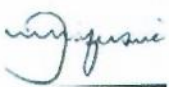
- 2 The Rules try to strike a balance between the right of a losing party to appeal a judgment and the right of the successful party to execute that judgment.
- 3 The urgent chamber application procedure has been completely overhauled.
- 4 The concept of case management has been invoked as a way to encourage the parties to a dispute to find each other, no matter how late, so as to avoid a situation whereby their conduct is regulated by an order of court which neither of them may find palatable.

The details are in the Rules.

At this juncture Honourable Chief Justice, Sir, allow me to call upon **Mr Edwin Manikai**, on behalf of the Committee, to hand over to His Lordship, an electronic copy of the Draft of the High Court of Zimbabwe (Commercial Division), Rules. The Rules are deliberately in electronic format to emphasise the move towards e-justice and the establishment of the Commercial Court as a completely paperless court. However, as this evolution is just beginning, we have also provided a hard copy of the Rules, so that no one is left behind.

What remains for me Hon Chief Justice, Sir, is to humbly express the Committee's profound gratitude and appreciation for the trust and confidence that you reposed in us. I also wish to thank most profusely all the members of the Committee and support staff whose meticulous attention to detail and their passion for the task, despite their busy schedules, were exhibited throughout our deliberations and drafting.

I thank you



**Hon Justice Joseph Martin Mafusire**