

# JUDICIAL SERVICE COMMISSION

*“A Zimbabwe in which world class justice prevails!”*



**KEYNOTE ADDRESS**

**BY THE**

**HONOURABLE MR JUSTICE L MALABA, CHIEF JUSTICE  
OF THE REPUBLIC OF ZIMBABWE**

**AT**

**THE 2020 JUDGES' SYMPOSIUM,  
TROUTBECK INN, NYANGA**

**17-20 SEPTEMBER 2020**

## **Salutations.**

I wish to acknowledge the following delegates who are with us this morning -

1. The Deputy Chief Justice, Honourable Justice Elizabeth Gwaunza, and the Acting Judges of the Constitutional Court;
2. The Senior Judge of Appeal, Honourable Justice Antonia Guvava;
3. Judge of the Appeal Court of Kenya, Lady Justice Agnes Kalekye Murgor, who is following this Symposium virtually;
4. The Judge President of the High Court, Honourable Justice George M. Chiweshe, and Judges of the High Court;

5. Senior Judge in charge of the Labour Court, Ms G. Mhuri, and Judges of the Labour Court and the Administrative Court of Zimbabwe;
6. The United Nations Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego García-Sayán, who is also part of this Symposium through virtual means;
7. The Secretary of the Judicial Service Commission, Mr W T Chikwana and members of the JSC Secretariat;
8. Representatives of the United Nations Development Programme (“UNDP”);
9. Ladies and gentlemen.

## **INTRODUCTION**

It is my singular honour and privilege to welcome you to the 2020 Judges’ Symposium. It is that time again when we gather as the Judiciary to take stock of our work. We reflect, network

and self-introspect in order to continuously keep ourselves abreast of the developing trends in a dynamic and ever-changing legal environment. This year's symposium, regrettably, comes against the backdrop of a ravaging pandemic, the novel COVID-19 virus. As you will observe, our attendance has been severely limited in line with the mandatory health guidelines and protocols we need to comply with. The social distancing, unusual face apparel, and constant sanitisation of our hands all remind us of the scourge that is still in our midst and the need to continue observing personal hygiene for our safety.

**Honourable Judges and distinguished delegates**, allow me to begin by stating that this forum plays a dual function. Firstly, it is an opportunity for the Judiciary to come together to collectively review, reflect and refine our approach to the discharge of our constitutional mandate. Secondly, and more importantly, it is an opportunity to develop our skills as judicial

officers, which is part of Continuing Professional Development.

**Section 165(7) of the Constitution** demands that every member of the Judiciary must take reasonable steps to maintain and enhance his/her professional knowledge, skills and personal qualities. He or she must keep abreast of developments in the law. This constitutional demand places a positive obligation on each judicial officer personally to take the necessary steps to develop himself/herself and keep abreast of developments in both municipal and international law.

As the Judicial Service Commission (“the JSC”), however, we have not left it to the individual Judge to fulfil this constitutional imperative. We are taking all the necessary steps to ensure that Judges’ skills and professional knowledge continue to be developed through training initiatives such as these end of term symposia. It is also for this reason that we have set up the Performance Management Committee for

Judges. Its mandate is to evaluate the performance management system of our courts and Judges and to identify training needs.

## **SYMPOSIUM THEME**

The theme for this Symposium is “**Guaranteeing Access to Justice in the context of COVID-19 and ensuring efficient and effective delivery of justice with particular reference to the role of Judges**”. It must now be common knowledge that Access to Justice is a basic tenet of the rule of law, without which the existence of the Judiciary itself becomes less important. I have extensively spoken on this subject on different occasions before. Without creating an enabling environment for access to justice by citizens, our own existence as courts becomes difficult to justify. This concept has a dual manifestation, in that it is both physical and qualitative.

Physical access to justice entails construction of court infrastructure and provision of court services to all litigants. We have done very well on this aspect of the concept over the past

few years, which saw us adopting an aggressive approach involving the establishment, construction and refurbishment of courts around the country.

It must be emphasised that court infrastructure alone without quality justice being dispensed therein is of little value. There is a symbiotic relationship between the infrastructure and the product that comes out of the contestations and settlement of disputes therein. It is the ability of the judicial officers to employ a scientific approach in the resolution of those disputes that guarantees true access to justice for litigants. It is only when those disputes are decided in terms of what the law dictates, and not any other consideration, that we can talk of quality justice. It is only then that we are able to state that access to justice has been availed. It follows, therefore, that our thrust on access to justice must now be broadened to include its second facet, which is the quality of justice dispensed in the courts.

It goes without saying that Judges play a crucial role in ensuring that the JSC achieves the objective of providing quality justice to litigants. It is for this reason that the topics for discussion at this Symposium have been carefully selected.

The advent of the Corona virus has brought with it unique challenges to the conventional methods of court operations. This unprecedented phenomenon has put our capacity to adapt to new situations to a stern test. The period from March to May 2020 saw a complete shutdown of normal life in the country and the world over. This did not spare the courts, as they were also virtually closed in response to the demands of both the law and our own safety. Our capacity to continue serving justice to those in need was severely compromised. Yet the justice sector must always remain open to the public, as it is an essential service that can neither be held in abeyance nor dispensed with. Even in such difficult times courts must ensure that the wheels of justice do not grind to a halt. This symposium presents an



opportune moment to reflect on what we can do better to discharge the constitutional mandate of dispensing justice efficiently despite the challenges facing us today.

We therefore need to be responsive to the new demands of the dynamic world we now live in as a result of the world becoming a global village. Adoption of new ways to transact our court business has become a necessity. Amidst the backdrop of this raging pandemic, we witnessed how technology, including Information Communication Technology (“ICT”), has developed from being an option to an absolute necessity in today’s business and daily life. Innovations, such as drones delivering medicines when physical movements by human beings were restricted, were just but a few adaptations to new challenges.

Courts cannot afford to lag behind in harnessing the potential of ICT in ensuring that access to justice is realised. To this end, plans to introduce virtual court sittings are at an advanced stage.

This is a build-up to the Integrated Electronic Case Management System (“IECMS”), the thrust of which will be to introduce paperless courts. It will be introduced in a few months to come. As part of the IECMS, Judges will hear cases and parties making submissions without being in the physical presence of each other. This digitisation of the courts and their processes is going to be the strategic focus of the Judiciary in our next Strategic Plan. It becomes imperative that Judges prepare and ensure that they are not left behind in preparation for this new *modus operandi*.

## **SYMPOSIUM PROGRAMME**

Once again the programme is designed to cater for maximum participation by all delegates. As is our usual practice, interactive break-away sessions have been included in the programme as a platform for discussion of important aspects of judicial functions. I urge all delegates to fully participate and engage in robust and constructive interrogation of the issues.

As you may have noticed from the programme, there are presentations that seek to facilitate exchange of views on how the courts may continue guaranteeing access to quality justice under the current circumstances created by the Corona virus. Lessons will be drawn from other jurisdictions in this regard, in a bid to see how we can strengthen our own system to ensure that access to quality justice is not compromised under what has been dubbed the “new normal”.

The other topics on the programme are not new subjects. They relate to judicial independence and integrity, as well as other areas that remain topical and integral in the life of a Judge. These have been deliberately re-introduced as an opportunity to benefit both senior and junior Judges. They discuss what a Judge is and must be.

The facilitators are here to stimulate a discussion that will lead to self-owned processes. May I encourage participants to be candid and do self-introspection on issues to be deliberated.

Where shortcomings are identified, we must find solutions to address them effectively.

This address would not be complete without me expressing my profound gratitude to the UNDP for its timely partnership with the JSC. The UNDP is not a new partner as it has collaborated with us before on many projects.

The UNDP was the first organisation to partner with the JSC after the JSC came into being in 2010 in the access to justice and rule of law project. The first support it gave us was by way of providing equipment such as recording machines, computers, photocopiers and motor vehicles. It is through the donation of motor vehicles that the JSC was able to reopen circuit courts, which had closed due to lack of resources.

We are happy to have the UNDP back. We are also committed to ensuring continuation of the relationship. I can also announce that the UNDP is supporting the JSC financially in the preparation of the Third Strategic Plan and training of

magistrates. The Secretary has advised me that the Secretariat is engaging the UNDP for purposes of securing financial support of the programme on the proposed opening of virtual courts in all the ten Provinces. The need for virtual courts cannot be overemphasised, especially in the context of COVID-19.

We sincerely appreciate the UNDP's acts of generosity, without which some of our targets would not have been achieved. We are particularly grateful to the UNDP for funding this symposium.

## **CONCLUSION**

**Honourable Judges and distinguished delegates**, may I once again invite you to participate constructively, engage robustly, and take the occasion presented by this forum to critically reflect on difficult areas of practice and take advantage of the presence of the facilitators and colleagues to find answers.

With my best wishes for the success of the Symposium, and in anticipation of your robust engagements, I wish you all fruitful deliberations and interactions. It is my pleasure to declare the Symposium officially open.

**I THANK YOU!**