

# JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



**ADDRESS BY**

**MRS JUSTICE R. MAKARAU**

**AT MASVINGO HIGH COURT**

**ON THE OCCASION OF THE OFFICIAL OPENING  
OF THE 2023 LEGAL YEAR**

**ON**

**9 JANUARY 2023**

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**THEME: PROMOTING COMPETENCE AND  
QUALITY OF SERVICE TO ENHANCE PUBLIC  
CONFIDENCE IN THE JUDICIARY**

Mr P Shumba and Mrs. Muhwandavaka

On behalf of the Honourable Judges Mawadze and Zisengwe with whom I sit today, I wish to acknowledge with sincere gratitude the presence in our midst of the following dignitaries:

- The Honourable E Chadzamira, Minister of State for the affairs of Masvingo Province;
- Mr W. T. Chikwana, Secretary to the Judicial Service Commission;
- Mambo F. Charumbira, Senator & President of the Chiefs Council; nemadziMambo ese avakuta
- The Hon J Nyakanhete, MP for the Masvingo Urban constituency;
- Councilor C Maboke, the Mayor of Masvingo;
- Service Chiefs from the Zimbabwe National Army, the Zimbabwe Republic Police, and the Zimbabwe Prisons and Correctional Service;
- Senior Government officials here-present;
- Honorable court assessors here-present

- Professor R. Zvobgo and other Academics here-present;
- Mrs Zuyu and Mr Chineka, Regional Magistrates,
- Mr Gwitima, the provincial magistrate and all magistrates here-present,
- All prosecutors here present,
- All legal practitioners here present;
- Members of the media and
- Staff from the Judicial Service Commission.

## **Introduction.**

Today marks the official opening of the legal year 2023. It is an important and special day for us in the judiciary. We mark the day by officially and publicly addressing the generality of the citizenry and the communities that we serve.

The Hon Chief Justice is addressing all of us from the Constitutional Court in Harare while the Deputy Chief Justice is presiding over a similar event in Bulawayo. The Hon Gawe JCC is in

Mutare while the Judge President is in Chinhoyi. **Distinguished guests, ladies and gentlemen**, it is therefore my singular, but most underserved honour to address all of you gathered here today and through you, the people of Masvingo..

As you all know, it is the time honoured etiquette of the judiciary not to make public addresses at all. The judiciary speaks to the public only on the law which it discusses through the medium of its judgments. This antiquated tradition is maintained, and necessarily so, to protect and enhance the impartiality value that attaches to the judicial office. Judges must only speak publicly on the law and even then, only to the extent that this is necessary to resolve a dispute that has been placed before them.

- Today, **distinguished guests ladies and gentlemen**, marks an exception to the general rule.
- Today, the judiciary addresses the public directly on all issues that it deems appropriate.

- Today, the judiciary publicly comments on all issues including and especially on those issues that are trending in the justice delivery system.
- But more importantly, **distinguished guests, ladies and gentlemen**, today the judiciary renders an account on its performance to the communities that it serves before it proceeds to express its hopes and aspirations for the future.
- It is my firmly held belief that a listening judiciary and a responsive judiciary uses the opportunity afforded by the occasion to respond to all the issues that the public would have raised during the preceding year as adversely affecting justice delivery in the community. A listening judiciary will therefore use the platform afforded by the official opening of the legal year to demonstrate that it is part and parcel of the community that it serves and that in its practices, debates and decisions, it reflects the values, fears and aspirations of that community.

- We the Zimbabwean judiciary strive to be a listening and responsive judiciary. We sincerely hope that the public finds us to be so.

### **Performance of the Court.**

I turn first to the performance of the courts in Masvingo during the preceding year.

The performance of the courts must be assessed against a backdrop where there was a marked increase in the number of cases that were filed in all registries across the country during the year 2022 and sizeable backlogs had built up during 2020 and 2021.

This is understandably so because the year 2022 initially saw the easing of and later the complete lifting of the travel and movement restrictions that had been imposed to curb and control the spread of the Covid 19 virus. Concomitant with the relaxation and lifting of travel and movement restrictions, the courts fully opened their doors to the litigating public and in turn lifted the temporary restrictions that had

been placed at the height of the pandemic in 2020 on the nature of cases that could be filed with the registries and heard by the courts.

I am pleased to report that notwithstanding the increase in the number of cases filed with the courts, 2022 has been a fairly congenial year for both the High Court and the Magistrates courts in Masvingo.

The High Court performed well despite the fact that it was manned by only two instead of the usual three judges.

A total 2059 cases were filed with the Court during the course of the year. 58 cases were brought forward from 2021, making the grand total for the year 2 117 cases. Out of these, 2094 cases were completed leaving only 23 cases that will be carried forward into 2023.

The case clearance rate was a sterling 99%.

I wish on behalf of the community here in Masvingo, to commend the two judges for their hard work and for keeping the menace of a backlog at bay. I am aware that during the official opening of the 2022 legal year, the Honourable Justice Garwe complimented the judges on their performance during the preceding year. It is apparent that the High Court here in Masvingo has set very high

standards for itself and the hard work of the two judges can only serve as an inspiration to other judges at other stations.

Even though the two judges coped well with the workload at the station, I am aware of the sentiments of the community that an additional judge be deployed to Masvingo High Court at the nearest convenience. I am confident that that the Honorable Chief Justice and the Judge President are keenly aware of the need for such additional deployment. It has been pressed upon me that the absence of an additional judge does not only place an onerous burden on the two judges at the station, but has the effect of retarding the quick resolutions of appeals and other disputes that require the concurrence of two judges in the very usual event when one of the judges cannot be in chambers for a day or two due to ill health or bereavement in the family.

I agree entirely.

The good turn-around on cases from this court must be maintained and should be a source of pride to the Judicial Service Commission as an example of the efficient deployment of staff and resources.



The performance of the magistrates courts was equally impressive. A total of 7 799 criminal cases were received during the course of the year. 7 795 cases were completed.

A similar feat was achieved in the civil division where a total of 5 572 cases were completed leaving a balance of only 71 cases. I commend the magistrates for a very pleasing 2022. In doing so, I have not lost sight of the comments and sentiments expressed on behalf of the profession. The candid but value adding observations made by the profession especially regarding the need for another provincial magistrate and an additional magistrate to assist in the disposition of civil matters can only go a long way in enhancing service delivery by the magistrates courts here in Masvingo. I commend these observations to the Secretary of the Judicial Service Commission.

Similarly, the issue of the opening of a circuit court at Chikombedzi which is fairly distant from Chiredzi and is not readily accessible especially during the rainy season can only go a long way towards improving access to justice. I was informed that the crimes emanating from the area are quite serious, including as they do, stock-theft and armed robberies. The delay in prosecuting cases from this area

results in the defeating of justice as the offenders easily but illegally cross borders into Mozambique.

**Distinguished guests, ladies and gentlemen,** you will have to forgive me for not giving you statistics from the customary law courts. Whilst the Constitution has clearly provides that these courts are part of the judiciary, certain concrete and administrative steps remain to be taken to enable the central collection, collation and analysis of returns from these court.

As you all know, customary law courts form the first interface between the law and the litigating public for the majority of our people. Time and again Mambo Charumbira reminds us that the customary law courts probably deal with more cases per year than the other general law courts combined. He is most probably correct in this regard.

Time has to come when a full account of the cases that are dealt with by these courts form part of the statistics that the judiciary reports on annually and, the opportunities offered and the challenges faced by these courts form part of the addresses that mark the official opening

of the legal year. As I have said, that time is not now but must come to pass in the future when the customary law courts are fully integrated into the judiciary.

### **Appreciation of key-stakeholders.**

**Distinguished guests ladies and gentlemen,** the two judges and seven magistrates here in Masvingo would not have accomplished the good work that they did without the support of the other key stakeholders in the justice delivery system who I wish to publicly commend.

I start with the legal practitioners.

The Senior Judge at this Court, and I believe he also speaks on behalf of his colleague and the registry staff in this regard, has nothing but kind compliments for the attitude of the legal practitioners in Masvingo regarding *pro deo* matters. I am informed that the legal practitioners here do not shirk their responsibilities to represent those who accused of crime and cannot afford to pay for their legal representation. Local legal practitioners dutifully take on such cases

without flinching and rarely request for postponements of matters already set down. I could but will not name places where the legal practitioners will employ every trick in the book to avoid *pro deo* matters and where they cannot do so without facing sanction, will palm off the case to the most junior member of their law firms. It is therefore commendable that the senior lawyers in Masvingo are taking on their responsibilities seriously and are setting a good example for their colleagues every where else.

While I started off by commending the local legal practitioners, I must in general commend the warm and cordial relationship between the profession and the bench. I am confident that the Hon Chief Justice will make one or two remarks in this regard in the speech that he is delivering in Harare.

For me personally, the warmth of the relationship and the mutual respect between the Bar and the bench was self - evident at the recent Bar –Bench colloquium held in Kariba at the end of the last legal term. The candid but tempered discussions that unfolded during the colloquium towards enhancing effective justice delivery by all and the resolutions that were adopted by the profession at the end of the

colloquium are testimony of the fact that the bar and the bench have realized that together they achieve more for justice delivery than when acting apart and in futile competition.

I mention but one of the resolutions that the profession tabled for adoption at the colloquium. It is the enhancement of training for legal practitioners. I have selected this one resolution because it speaks eloquently to the theme that the Honourable Chief Justice has chosen for the 2023 legal year. It speaks to the issue of competence on the part of legal practitioners.

I wish at this stage to encourage the legal practitioners in Masvingo to embrace the proposed training of lawyers that the Law Society intends to roll out in 2023 and beyond. Senior legal practitioners must, if they are not already doing so, take charge of the young and junior lawyers in their law firms and roll out effective in-house training programs. Young and junior lawyers in turn must embrace and submit to training by their seniors. The law school can only take law graduates to a point where they know where and how to find the law. While it has been proven that age alone is not a guarantor of wisdom, experience does assist in perfecting the lawyer.

An experienced and trained lawyer will know when to press an argument and when to rest their submissions and I should be resting my own submissions on this issue. But before I do so, I wish to make this one point. Speaking for myself, I know that the best judgments and jurisprudence from our courts often come out of the best prosecuted and defended cases. Good judgments are not written from thin air. They are an analysis of the competing but sound arguments presented by the parties.

It is my further firmly held view that it is the hallmark of achievement by any legal practitioner, to have their argument form the backbone of a reportable judgment. There is nothing more pleasurable for a lawyer, I think. Therefore, in a very small way, I wish to inspire you, the legal practitioners from Masvingo, to have more and more of your arguments recounted and debated in the reported judgments.

### **Assessors.**

**Distinguished guests, ladies and gentlemen,** allow me at this stage to acknowledge the wise men and women who sit with judges in

all criminal matters. These are distinguished Zimbabweans who do not have to don on white horse hair wigs like us judges to show that they have seen it all. Their hairs are naturally grey because they have lived and experienced life. I am referring to distinguished court assessors who are often overlooked when we talk of the High Court. Also often overlooked is the fact that before they became assessors, these eminent men and women served in various capacities often rising to the top of their chosen careers. We also overlook that instead of them retiring and enjoying their well-deserved rest, they continue to serve the country in the office of court assessor.

Because all our assessors are men and women who have distinguished themselves in their past careers, they bring to the assistance of the court the wealth of experiences gained from that exposure, from a long career and from life itself. They are also members of the communities that the court serves. They thus come to court, not only to temper and enrich the law with life experiences, but to ensure the direct and active participation of the community in the determination of the criminal liability of the members of that community. They are the voices and consciences of society in the

determination of criminal matters. They are therefore invaluable in the dispensation of criminal justice.

It is thus disheartening to learn that two of our eminent citizens and assessors have not been feeling well of late. I am informed that Mr. Mushuku one of the long serving assessors at this court has had to step down due to ill health and that Mr. Dauramanzi has not been able to sit for the last term or two again due to ill health. On behalf of the judiciary and especially the court here at Masvingo, I wish to publicly thank Mr Mushuku for his dedication to duty at this court and before. We wish both Mr Mushuku and Mr Dauramzi a speedy recovery and continued good health.

To all our other assessors, we express our heartfelt gratitude for the assistance that you render to the courts and for your invaluable service to and representation of the communities from which you come. May the Almighty grant you continued good health and long lives.

**ZRP, NPA and ZPCS.**



**Distinguished guests, ladies and gentlemen,** the Zimbabwe Republic Police, the National Prosecuting Authority and the Zimbabwe Prisons and Corrections Service are indispensable stake-holders in the criminal justice delivery system. The senior judge informs me that the courts here in Masvingo enjoy very cordial relationship with these agencies and that the good work coming out of this court is directly attributable to their combined efforts, sentiments that were echoed by the representatives of these agencies during our short meeting yesterday. I commend the agencies for the good work done in the year 2022 and have no doubt that such good work will continue in 2023 and beyond.

I however wish to advert to one or two highlights from the briefing that I received from the officer Commanding Masvingo Province.

Of immediate concern is that general crime in the province has gone up by 13 % from last year. The prevalent crimes in the province of Masvingo are murder, armed robberies involving firearms, stock theft and theft of copper cables. These prevalent offences have the effect of retarding social and economic development in the province and effort must therefore be taken by all of us here present to play

whatever roles we can as a community to reduce crime in the province of Masvingo.

### **Traditional Leaders.**

Traditional leaders are not stakeholders but are part and parcel of the judiciary. There are one or two issues that touch on their offices and which issues I wish to comment on briefly. These are the newly legislated roles of Traditional Leaders as marriage officers in terms of the Marriages Act and the outlawing of child marriages by the Constitutional Court.

Let me start by acknowledging that Traditional leaders in our communities play many roles. They discharge administrative, cultural and legal duties in addition to being the rallying and identifying point of any given community.

The coincidence of duties in the office of a Traditional Leader sees them being custodians of culture on one hand and custodian of the Constitution on the other. They have to promote, uphold and protect both. And at times, culture and the Constitution nestle together

comfortably making the role of the traditional leader easy and seamless. At times culture and the Constitution are in open conflict making the traditional leader sit in between the two stools most uncomfortably.

A simple example of what I mean was given by Mambo Murinye during our brief meeting yesterday.

A cold blooded murder is committed in the area of the jurisdiction of the traditional leader and the family of the offender, through the auspices of the traditional leader makes overtures to atone for the death of the deceased. That the offender a mature adult is represented in these negotiations by a person who stands in *loco parentis* and is therefore treated as a child is neither here nor there. Where the negotiations are successful, the criminal court may actually receive evidence of such negotiations as mitigating the sentence to be meted out to the offender.

But where the family of the offender pledges a girl child in the process as atonement for and replacement of the lost life, the law demands that the traditional leader protects the girl child even if this is in open defiance of age old cultural practices in his or her jurisdiction.

When and where to draw the line is a minefield that Traditional Leaders must navigate with utmost care.

For judges who interpret the constitution daily, the correct approach to adopt in the given situation is clear and easy. The point to be made and one which dovetails with the theme of the 2023 legal is that all effort must be made to assist the Traditional Leaders to know when the law and custom and culture are in conflict and when they are not. The Chiefs Council, members of Academia, the Judiciary, the Judicial Service Commission and its training arm, must all come together to enhance competent service delivery by our Traditional Leaders in the application of customary law in tandem with the Constitution and other statutes.

In my view, it is not readily appreciated that Traditional leaders are in the unenviable position of being custodians of both the law and culture yet they do not receive upon their assumption of office, training on the intricacies and intermarriages between the two legal concepts.

The new Marriages Act is now law. Amongst its many novel provisions, it also institutes Traditional Leaders as marriages officers of customary marriages in their respective jurisdictions.

In carrying out this new role, Traditional Leaders must ensure that children are not married at all even with their consent or the consent of their guardians.

The Constitutional Court has spoken and spoken loudly against child marriages. Traditional leaders live with the majority of our populace and by extension, live with the majority of children. It falls squarely upon their shoulders to protect these many children from early purported marriages. From the media reports that we have read in the immediate past, it appears that the community of Masvingo as a province has its fair share of this scourge and must come up with strategies and measures of eradicating the unconstitutional practice.

To avoid marrying off children, especially the girl children, the issue of birth certificates to prove the ages of those intending to marry

before the traditional leaders is one issue that may have to exercise the minds of traditional leaders and other relevant authorities for the effective discharge of the provisions of the new marriages law.

## **Conclusion**

Before I conclude allow me **distinguished guests ladies and gentlemen**, to pause momentarily and reflect on the forthcoming year in general.

2023 is an election year.

We in the judiciary welcome the holding of elections in 2023 as evidence of constitutional discipline by the state of Zimbabwe and its commitment to the rule of law. We therefore applaud the government and other key players for the preparations that are underway towards the holding of presidential and general elections later on in the year.

We further applaud the calls that have hitherto been made for peaceful and violence-free elections. We add our very small voice to that call. We firmly believe that whilst political contestation must be robust so that the best candidates emerge and are voted into office,

violence or threats of violence have no place in that contestation. Our electoral legal framework though not perfect, is robust enough to ensure fair play for all contestants without the need to resort to violence.

We particularly welcome the fact that the calls for violent free elections are coming from the leadership of the contesting parties. We have no doubt that such calls will be heeded by the generality of the populace and that the forthcoming elections will be peaceful and violence-free.

We further implore and encourage all contesting candidates at all levels to accept the results of the poll as a reflection of the will of the people. Whilst the judiciary will have in place the requisite machinery to determine all poll related disputes from political violence offences to election petitions, it is however our sincere hope that none of these arrangements if needed at all, will be put to minimum use in the forthcoming elections.

With these few remarks, it is my singular honour to now declare the 2023 legal year officially open. May I request all of you to rise and

stand while Reverend T. Masimba dedicates the 2023 legal year to the Almighty in prayer. Before the prayer may we all observe a minute of silence in remembrance of Justice Elijah Makomo who sadly passed away on 24 December 2022.

After the prayer:

**Court Adjourns.**