**COURT WATCH 1/2020**

**[14 January 2020]**

**Theme for the 2020 Legal Year:**

**“****Transparency and Accountability”**

**Introduction**

On Monday 13 January 2020 Chief Justice Luke Malaba delivered his speech for the official opening of the 2020 Legal Year in Harare while the Deputy Chief Justice (DCJ) Elizabeth Gwaunza was delivering a similar speech in Bulawayo emphasizing on the need for open justice and accountability on the part of judicial officers.  The theme for this year is “Judicial Transparency and Accountability”. It resonates well with last year’s theme of consolidating the rule of law. The purposes and objectives of the rule of law as a foundational value and principle cannot be achieved by the guarantee and application of the fundamental principle of judicial independence alone.

Whilst an independent Judiciary is the essence of the rule of law, it is the same Judiciary which is required to act in a transparent and accountable manner in the exercise of all judicial functions.

**The Open Court Principle**

The open court principle requires that court proceedings presumptively be open and accessible to the public and to the media. Public access to the courts guarantees the integrity of judicial processes by demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law.” Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts.

**Transparency and Accountability**

Chief Justice Malaba said Transparency and accountability foster within the public a sense of ownership and trust in government. The concepts reinforce the notion that judicial officers are employees of the people. Public decision-making processes ought to reflect the will of the people.It is for this reason that section 162 of the Constitution provides that judicial authority derives from the people of Zimbabwe. In that regard, citizens are major stakeholders in the business of the courts. He added the courts must therefore, from time to time, account to the citizens on how they are performing their functions.

In her address, the DCJ emphasised the importance of transparency and accountability of the judicial system. She mentioned that the independence of the Judiciary is crucial for the "public to have trust and confidence in the Judicial system". She then went on to highlight the judiciary's commitment to independence and how such independence is a "fundamental principle of constitutionalism and the foundation of the rule of law".

**Live Broadcast of Cases**

In line with the Open court principle, Justice Malaba revealed that cases of public interest will now be broadcast live so as to provide the general populace access to the court proceedings. He said the broadcasting of court proceedings will also help bridge the information gap with very few people willing to attend the courts and in some cases unable to attend.

The Chief Justice said the move was intended to “foster public trust and confidence in the court system by debunking the myth that court proceedings are esoteric and that courts want to mask their decisions”.

The Chief Justice however noted that there would be “strict regulation” of the broadcasting process to protect the dignity of proceedings.

The DCJ also announced in Bulawayo the JSC’s wishes to have more cases which are of public interest to be broadcast live.  "This trajectory", she says, "speaks to the Judiciary's commitment to transparency and accountability”.

This is a positive move and the only thing that’s not clear yet is how the authorities will come to a decision on whether a case is deemed as being of national interest or not.

**Performance Management**

The Chief Justice announced that the JSC has introduced a performance measurement system for judicial officers and their courts. He said the JSC has set up a performance management and Training Committee headed by the DCJ and the terms of reference for the committee includes engaging judicial officers and stakeholders to come up with an acceptable and standardised performance measurement system for judges.

The DCJ in Bulawayo highlighted the need for  "courts to provide reasons for their decisions through writing and publishing judgments."  She states the need to have reasoned judgments promotes fairness in the judicial systems. The DCJ then pointed out that "from a constitutional point of view, the provision of reasons is an important mechanism for making administrators accountable to the people they serve and for achieving a culture of justification."

It has also been mentioned in the speeches that the Judiciary has put in safety nets that will ensure that judgments will be delivered without undue delay. Such safety nets can be found in the 2019 Magistrates Code of Ethics and the 2012 Code for Judges. The DCJ mentions that a system to measure judicial officers' performance is under consideration as this is meant to "demystify the age old misconception that judicial independence is synonymous with unaccountability."

**Anti-corruption initiatives**

The Chief Justice reported JSC has made progress in the setting up of specialised Anti-Corruption courts in the magistrates courts and in the High Court. He said the JSC has reached out to their Ugandan counterparts to seek assistance in the professional development of local judicial officers.  Uganda has been running specialised anti-corruption courts for the last ten years.

The Deputy Chief Justice urged the public to join in the fight against corruption and encouraged responsible forces such as the National Prosecuting Authority (“NPA”), the Zimbabwe Anti Corruption Commission(“ZACC”) and the Zimbabwe Republic Police (“ZRP”) to carry out thorough investigations prior to arrest in order to avoid  such accusations such as the "catch and release".

**Integrated Electronic Case Management system**

The JSC is in the process of introducing an integrated electronic case management system that the Chief Justice believes affords “great potential to automate court services and proceedings as a way to make the administration of courts more efficient, transparent and accountable”. The CJ says the system will be elaborate and consist of the following exciting features intended to aid court administration and case management-

* Increased public access to information

The system will allow the public to find out the status of cases through electronic platforms viewable from public kiosks located in the registries of the courts. Those who are not computer literate will still get assistance from the court’s IT personnel to access the information they need electronically.

The DCJ reiterated the JSC's commitment to transparency and accountability. The website will continue to disseminate information and be up to date with the activities of the JSC. The DCJ also mentioned commitment to improving the website.

* Reduction of case backlogs

The system will provide judicial officers with a dashboard meant to track the status of every case on the judicial officer’s cause list. It will provide information, such as analysis of the age of cases, deadlines and case stages that require court action. This information will give Judges a more precise picture of the status of their cases.

* Introduction of virtual court sittings

Virtual court sittings transform physical court hearings into automated trial fora. This will enable parties to make submissions to the Judge without the need of having to appear physically in the courtroom.

The e-filing component of the system will also enable litigants to file pleadings and other court documents electronically from anywhere in the country. The procedure will reduce the cost of litigation, as expenses such as travelling will be curtailed.

**Open Day Concept**

In line with the theme , the Judicial Service Commission (JSC) has put the open day as a permanent event on its calendar. Open days are days where departments in the Judicial Service Commission will answer questions from the members of the public and disseminate information relating to activities and operations of the various JSC departments. The JSC has set the 10th of June of each year as the Judicial Service Commission Day, a 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 about how the courts operate.

**Infrastructure and Development Projects**

The DCJ highlighted that both the Gwanda and Lupane construction of Magistrates Courts. The DCJ also acknowledged residents from places like Bulilima, Insiza, Umguza and Mangwe that have to travel long distances to gain access to justice. She mentioned that the JSC has made it a priority for the Commission to establish at least one resident court in each district in future.

**Performance of the court and Conditions of Service**

Overall, the CJ and DCJ gave a statistical account of the progress of the courts. The analysis showed how much backlog the relevant courts had, how many cases they received and how many they were able to discharge during the course of 2019. The data shows an improvement in how courts have managed to discharge and deal with cases efficiently. Conditions of service for members of staff are a sensitive area because a demotivated workforce will not produce desired results. Salaries of judicial officers remain divorced from the reality of the importance of the judicial functions they perform. Efforts to fight corruption must be complemented by awarding judicial officers and their support staff a living wage to prevent them from being tempted into accepting bribes or other undue considerations.

**Looking Forward**

The DCJ reminds us of the Constitutional requirement that this year, the Supreme Court and the Constitutional Court will formally separate. Further, she hopes the High Court Rules and Commercial Court rules will be gazetted this year.

The introduction of the open court system is a very welcome idea. Open court serves democracy as much as it serves justice. It allows citizens to review the outcomes of current laws and to advocate to their representatives when they believe certain laws need to be reformed. This is an essential feature of a flourishing democracy.

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