

JUDICIAL SERVICE COMMISSION



ADDRESS BY THE HONOURABLE MR JUSTICE

LUKE MALABA,

CHIEF JUSTICE OF ZIMBABWE,

AT

THE CEREMONY TO MARK THE COMMENCEMENT OF THE

MULTI-STAKEHOLDER ANTI-CORRUPTION TRAINING

27 JANUARY 2020

Salutations.

Distinguished Guests, Ladies and Gentlemen, I am happy to join you today in what I believe is one of the demonstrations of our commitment to capacitate ourselves in the fight against corruption. We agreed as the three arms of State that corruption destroys the moral fabric and economy of a country. We all agree that as a country we will not move forward and develop as long as we allow the vice of corruption to prosper within our midst. The edition of the “*The Sunday Mail*” of 19 January 2020 carried an editorial titled “*Corruption: A National Security Threat*”. The following comments on corruption are worth referring to here:

“Corruption is dehumanising, it is corrosive, it is a disease and, like every other disease left untreated, it kills. This vice is now a matter of national security and authorities ought to treat it as such.

Corruption is a cancer, which takes the nation backwards and causes insecurity. Corruption is now a security threat because it is causing some individuals to create mafias or alliances for protection when found on the wrong side of the law.”

All of us here are in the forefront of the justice delivery system in the country. The expectation of the nation is that we must deal decisively with this vice. To be able to do that, we need to be adequately prepared both materially and mentally to defeat this monster. There is need for co-operation in the fight against corruption. We need to be equipped with the necessary skills and knowledge on how we can defeat it. Training is one of the ways of equipping ourselves with the skills necessary to ensure success in this fight.

I have the pleasure and honour of welcoming Justice Lawrence Gidudu of the High Court of Uganda to Zimbabwe and to this Workshop. Justice Gidudu is the Judge in charge of the Anti-Corruption Court in the High Court of Uganda. The Honourable Judge is accompanied to Zimbabwe by Mr Musa Modoi. Uganda is a sister African country that has also experienced the scourge of corruption. They, however, realised the devastating consequences of the vice much earlier than us. They decided ten years ago to do what we have started to do in greater measure in the new political dispensation. Uganda introduced the anti-corruption courts a decade ago and Justice Gidudu has been in charge of those courts for all those years. We therefore have with us today a

person who has been in the forefront of relentlessly fighting the crime of corruption for a period of more than ten years.

I felt that the experiences that Justice Gidudu has gained over the years will be of much value to us as a nation. That is particularly important for the administration of justice, which is the last line of defence in the fight against corruption. During the period that they have been fighting corruption in Uganda, they obviously scored some successes. I hope the Judge will share with us the successes, especially what they did to get where they are in combating the crime of corruption. I am informed that Uganda has a conviction rate of about 90% in corruption cases. This is no mean achievement. It simply means there are things that Uganda is doing right. Equally so, Uganda may have encountered challenges that slowed down the progress towards success. The lessons learnt in those trying times are also important. They will assist us in coming up with measures to ensure that we put in place an efficient and effective system for combating corruption.

We have gathered here men and women from various arms of the State involved in the fight against corruption in Zimbabwe. They are committed as individuals to fighting corruption. They represent

institutions that have adopted the fight against corruption as one of the goals of their visions. Fighting corruption is invariably an integral aspect of the Strategic Plan of each of these institutions. We have realised that this is not an easy fight. We, however, do appreciate and are indeed cognisant of the critical role we have to play to eradicate corruption in Zimbabwe.

I welcome the Prosecutor General Mr K Hodzi, Honourable Justice Matanda-Moyo, Honourable Judges and magistrates, Mrs Mabhiza, Mr Mpofu, Deputy Commissioner General Ngirandi and all the members of the NPA, ZRP, ZACC and JSC who are here.

The training you are going to have for the rest of the week is very important. It is meant to sharpen your skills and to make you more knowledgeable as you investigate, prosecute and adjudicate over corruption matters. Corruption is a specialised crime that requires specialised knowledge. Criminals continue to invent new methods of committing the crime and avoiding detection. They have perfected the ways of avoiding conviction and making a mockery of the administration of justice system. State institutions get so paralysed by corrupt cartels that they fail to deliver justice.

It becomes important that we react to these developments by modernising the ways we fight the vice. We need to sharpen our skills on how to deal with criminal conduct such as money-laundering and cyber-crimes. We need to improve the mechanisms for recovering proceeds of crime. We need to put in place effective measures for dealing with pre-trial applications that are aimed at delaying trials.

Zimbabwe is a signatory to the SADC Protocol on Corruption (“the SADC Protocol”), the African Union Convention on Preventing and Combating Corruption (“the AU Convention”) and the United Nations Convention against Corruption (“the UNCAC”), which were signed on 14 August 2001, 11 July 2003 and 20 February 2004 respectively. The Conventions were later ratified on 8 October 2004, 17 December 2006 and 8 March 2007 respectively. Article 5 of the UNCAC calls upon state parties to develop and implement or maintain effective, coordinated anti-corruption policies. It is in the light of the international obligation and the desire to uphold the fundamental values of democracy, the rule of law, and human rights that various initiatives have been undertaken to fight corruption.

The Constitution of Zimbabwe now requires that we should have an Anti-Corruption Commission in the country, whose sole mandate is to fight and defeat corruption. The Commission is in existence and is led by a Judge of the High Court, Honourable Justice Matanda-Moyo. I am happy to note that the Commissioners and other members of the Commission will participate in this training. The ZRP and the NPA have created anti-corruption units within their institutions, whose mandate is to investigate and deal with corruption-related matters respectively. We have a special unit in the office of the President that deals with corruption-related matters. The Ministry of Justice, Legal and Parliamentary Affairs plays an active role in anti-corruption initiatives. The civic organisations have also come in to support State institutions in this fight. Recently the International Commission of Jurists (“the ICJ”), in partnership with the European Union, came together with ZACC and NPA to launch the anti-corruption and publicity awareness campaign.

The Judicial Service Commission (“the Commission”) has played its role in the fight against corruption. The Commission has set up anti-corruption courts in every Province, except for three Provinces. The

remaining Provinces will have anti-corruption courts in the course of the year. Specialised anti-corruption courts were recently set up in the High Court in Harare and Bulawayo. Judges to preside over those courts have been appointed. Those Judges, together with senior Judges of the High Court in Masvingo and Mutare and magistrates presiding over anti-corruption courts, are part of the participants being trained this week. I refer all these initiatives to show that Zimbabwe is honouring its obligation under international law to develop and implement effective, coordinated anti-corruption policies.

The fight against corruption, **Distinguished Guests, Ladies and Gentlemen**, is not for the faint-hearted. It requires seriousness, dedication to duty and collective effort by all the institutions in the justice delivery system. All the stages of the criminal justice system, from the reporting of the case, its investigation, the appearance of accused persons in court on time, the prosecution and finally the adjudication, must be carefully integrated and coordinated to ensure speedy and quality outcomes. I must hasten to mention that the need for expediency and speedy finalisation of cases should not at all be used as a licence to violate the rights of accused persons provided under the

Constitution. It would be corruption of the justice system itself if we were to wantonly violate the rights of accused persons for the sake of expediency.

When I delivered the remarks during the ceremony to mark the opening of the 2020 Legal Year, I emphasised that all institutions must play their roles diligently and professionally. I repeat these sentiments today. All of us here have obligations imposed by the Constitution. We have powers given by the Constitution. As we fulfil our mandates and exercise these powers we need to do so in terms of the law. Each of the institutions here plays a critical role in the criminal justice system. If it fails to play its role efficiently and effectively in terms of the law, the administration of justice is the loser.

In the remarks at the opening of the 2020 Legal Year, I explained what is expected of each of the institutions engaged in the fight against corruption. It is necessary to repeat those remarks today to emphasise the fundamental principles by which we should all be guided in the fight against corruption to ensure success. I said:

“We have made the call before and we will not tire of repeating that the fight against corruption requires the collective effort of all institutions involved in the administration of justice. Members of the public must also put their hands on deck. Investigators and arresting details must continue to sharpen their skills and make thorough investigations before arresting those suspected of engaging in corruption and bringing them to court.

Arrests must be based on the existence of a reasonable suspicion that the person has committed the offence with which he or she is charged. Ordinarily, when a decision is made to arrest a person on reasonable suspicion of having committed an offence, the intention would be to bring him or her to court for remand or for trial. There must be knowledge on the part of the investigating, arresting details and the prosecutor of the fundamental rights of an accused person, the enforcement of which would require a well thought out, carefully prepared and meticulously presented prosecution case to vindicate the administration of justice.

Weak prosecution cases must not be brought to court. They only serve to frustrate the ends of justice because the suspects end up

being released at court for want of prosecution. That scenario lends credence to the notorious accusations of “catch and release” coined by some sections of society. The NPA must be careful, conscientious and professional in executing its constitutional mandate of prosecuting criminal matters in courts. It is the NPA that must also properly advise the investigating arms of the State, such as the ZRP and ZACC, on the strength of evidence required in each criminal case. If the NPA abdicates this crucial responsibility, the failure will serve to bring the administration of justice into disrepute as inconclusive evidence will be presented before the courts.

Legal practitioners are equally enjoined to play their constitutional role of representing their clients to the best of their abilities and in terms of the law. Legal practitioners are officers of the court and are expected not only to assist the court arrive at just decisions but to behave ethically as well.

The courts themselves are expected to be diligent and properly manage cases that are brought before them, and to deliver decisions expeditiously. The courts remain the last bastion in the

fight against corruption. A court that unnecessarily postpones matters and delays in the delivery of decisions is an obstruction to the administration of justice.”

These remarks, **Ladies and Gentlemen**, are very important. I urge you to internalise them as and when you perform your various constitutional mandates. I worry when I read and hear of cases that are crumbling at courts because no proper and thorough investigations were done. Accused persons would have been rushed to court by the arresting and investigating authorities without any evidence linking them to the alleged crime. I get concerned when matters are not set down for trial and those set down for trial are continually postponed in court. There are reports of trials failing to kick off and at times charges being withdrawn before plea because the NPA’s house is perpetually and permanently not in order. I become greatly concerned when I hear of judicial officers who are taking their time to finalise matters. In some cases, trials are constantly stopped in the lower courts for reasons that are not supported by the law at all. It is reflective of a system that is not working well. It is a system that requires surgery in order to revitalise it.

We need to collectively contribute in our own spheres of power to an efficient and impartial justice delivery system in the country. As we undertake the judicial reforms that are a feature of the policy of the new political dispensation, we must accept the duty to change our mind-sets. We cannot continue to think and behave in the same manner as we did yesterday. We need to change ourselves before we are able to show the results of change in the justice delivery system.

The editorial in “*The Sunday Mail*” had this to say:

“Several studies by respected organisation and scholars from around the world have concluded that strong public institutions are important in fostering economic growth and safeguarding a country’s national security.

Strong institutions ensure that issues of corruption are dealt with promptly as there should be coordination amongst all arms of the State.

Oftentimes, criminals exploit the laxity in institutions to evade justice. There is, therefore, urgent need to capacitate all

institutions dealing with issues of law and order, including delivery of justice particularly in tackling complicated cases. ...

Ordinary citizens expect authorities to address issues of corruption seriously because any perception of lethargy or lack of action creates disharmony and lack of public trust in institutions.”

I must repeat the comments I made in my speech during the opening of the 2020 Legal Year, that collaboration should never be construed as connivance against suspects to put them in prison. Collaboration should also not be construed to mean interfering with the independence of institutions as provided for by the Constitution. The essence of the rule of law is that every person is presumed innocent until proven guilty. Section 70 of the Constitution further provides for the right to a fair trial and legal representation by a legal practitioner of choice. These are fundamental rights that must not be trampled upon. My call is for an efficient justice system that inspires confidence in the people of Zimbabwe. We aim at having a justice system that expeditiously deals with matters in a fair manner so that those who are innocent are quickly released to continue with their lives and those found guilty are dealt with in terms of the law. That is the collaboration and efficiency that I

clamour for as the Chief Justice. I believe that is what the people of this country are asking of us.

I am aware, **Distinguished Guests, Ladies and Gentlemen**, that all of the various institutions here have been involved in training their members of staff to sharpen their skills in the fight against corruption.

In March 2019 the NPA held an anti-corruption workshop for its officers. The desire was to sharpen the skills of their officers in handling intricate cases of corruption and to sensitise the officers on the dangers and negative impact of corruption.

In November 2019 ZACC conducted a training in collaboration with NPA and ICJ which focused on crimes associated with corruption, evidence gathering, criminal procedure, regional and international standards for combating corruption, and asset forfeiture.

I have read and heard of the efforts by ZRP in training its officers on issues of integrity and conducting proper investigations.

The Commission has taken the training of judicial officers on how to deal with corruption related crimes as a continuous event since 2018.

Magistrates throughout the country have undergone training held to

craft strategies on case management and how to properly deal with pre-trial applications. I am happy that Judges are now included in the training initiatives undertaken by the Commission.

The training being held today is of a different nature. It is fundamental in various ways. It is the first that brings together all players where they are being trained on the same issues. It is the first in which we are bringing a resource person from outside the country with expertise to share and impart his vast knowledge on how to deal with corruption related matters. We have taken the fight against corruption to another level. Failure, **Distinguished Guests, Ladies and Gentlemen**, should never be an option. We shall be judged by the results we achieve. This should be the beginning of greater things to come in this fight. When they hear of us gathered here, the criminals and would-be criminals should know and realise that it is no longer business as usual. They should realise that the system will be ruthless with those found on the wrong side of the law. Corrupt elements must be removed from the system.

As the Chief Justice, I expect this Workshop to yield positive results. I want to see as a result of this Workshop an efficient adjudication and

finalisation of cases in the anti-corruption courts. I want to see an investigative authority that carries out exhaustive investigations before bringing cases to court to secure successful outcomes. I wish to see an NPA that prepares adequately for its cases before going to court and does not unnecessarily postpone cases set for trial. Finally, I would want to see a reduction in corruption related matters in the country. These are my wishes. I hope they are your wishes too.

As I conclude, allow me, **Distinguished Guests, Ladies and Gentlemen**, to thank the JSC Secretariat for its efforts in bringing Justice Gidudu to Zimbabwe and in arranging and coordinating all the Workshops that will take place in the course of the week. I also want to express my utmost appreciation to my counterpart, the Chief Justice of Uganda, for allowing Justice Gidudu to come to Zimbabwe and facilitate in the training of players in the justice delivery system. I further wish to acknowledge the ICJ, which has partnered with the Commission in arranging for the funding of the training. I want to thank every one of you for agreeing to be part of the training. I can assure you the ends of justice and the country at large will benefit immensely from what we are doing here. Let us now get to work.

I THANK YOU!!