



Malawi Judiciary

SPEECH

BY

**THE HONOURABLE THE CHIEF JUSTICE RIZINE R.
MZIKAMANDA SC**

**AT THE CEREMONY MARKING THE OFFICIAL
COMMENCEMENT OF THE 2023/2024 JUDICIAL
YEAR**

AT

**CHICHIRI COURT COMPLEX - BLANTYRE
6TH OCTOBER 2023**

SALUTATIONS:

- **THE HONOURABLE THE CHIEF JUSTICE OF THE REPUBLIC OF MALAWI – THE HONOURABLE JUSTICE RIZINE R. MZIKAMANDA SC**
- **THE JUDGE PRESIDENT OF THE MALAWI SUPREME COURT OF APPEAL – JUSTICE OF APPEAL LOVEMORE P. CHIKOPA SC – AND ALL JUSTICES OF APPEAL**
- **THE JUDGE PRESIDENT OF THE HIGH COURT - JUSTICE JOHN CHIRWA - AND ALL HONOURABLE JUDGES OF THE HIGH COURT**
- **THE REGISTRAR OF THE SUPREME COURT OF APPEAL AND HIGH COURT - HIS HONOUR KONDWANI BANDA – ALL DEPUTY REGISTRARS AND ASSISTANT REGISTRARS**
- **CHIEF RESIDENT MAGISTRATES AND ALL MAGISTRATES**
- **THE HONOURABLE ATTORNER GENERAL – MR THABO CHAKAKA NYIRENDA**
- **THE PRESIDENT OF THE MALAWI LAW SOCIETY – MR PATRICK MPAKA**
- **ALL SENIOR COUNSEL**
- **THE DIRECTOR OF LEGAL AID BUREAU – MR TROUBLE KALUA**

- **THE DIRECTOR OF PUBLIC PROSECUTIONS – MR MASAUKO CHAMKAKALA**

- **DISTINGUISHED MEMBERS OF THE LEGAL PROFESSION**

- **MEMBERS OF THE PRESS**

- **LADIES AND GENTLEMEN**

1. On 28th September 2023, we had a Special Sitting of the Supreme Court of Appeal to honour the memory of departed members of the legal profession for their distinguished service both on the Bench and at the Bar. Our focus was on our departed colleagues. We remain convinced that the ceremony carried a lot of meaning and was the right thing for the living to do, regardless of what challenges our system faces today.

2. Today, I welcome you all to this yet another important and meaningful ceremony of the official commencement of the 2023/2024 Judicial Year. This, too, is a time-honoured tradition which cannot be minimized by the challenges the system of justice continues to face in this day. It will be a time to take stock of some of the major achievements of the Judiciary in the recent past, challenges faced, interventions employed and plans for the coming year. The Judiciary's mandate under the Constitution needs to be explained to the public together with what it is that the Judiciary continues to do in order to fulfil that mandate. The people's agenda in the administration of justice through Judiciary must be the focus and not the Judiciary's agenda through the people. Serving the people better means putting the service to the people

at the focus and not to serve the Judiciary through hijacking the people's agenda.

3. We believe that an accurate understanding of the role of the Judiciary under our Constitution forms the proper basis of the public oversight and scrutiny of judicial work in this country. It is this accurate understanding of the role of the Judiciary that would premise meaningful comments or views of Court business, which would in turn enable constructive suggestions on how courts can serve people better.
4. It is the public's right to comment on or criticize the work of the Courts and the Judiciary must accept and reflect on public scrutiny and criticisms that aim to improve service delivery. Criticisms that aim to undermine public confidence in the justice system at every turn of events, as we have seen lately, are unhelpful in the proper administration of justice. We understand that public confidence and trust in the Judiciary is of particular importance in enforcement of the rule of law, constitutionalism, democracy, good governance and administration of justice.
5. In-accurate, incomplete, ill-informed and misconceived understanding of the role of the Judiciary results in misplaced and inappropriate criticisms of the Judiciary, even from least likely quarters. What is more, such type of understanding of the role of the Judiciary under our Constitution leads to unrealistic expectations of the Courts.
6. Section 9 of the Constitution, puts the mandate and role of the Judiciary in very clear terms, thus:

“The Judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with the Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescription of law.”

Every one of the words in the above provision carries an important meaning commensurate with the serious role that the Judiciary plays under our Constitution in the context of the doctrine of Separation of Powers. Not only does this provision place responsibility on the Judiciary, but it does place responsibility on all other institutions and stakeholders to respect and preserve the role of the Judiciary without undermining it for whatever reasons.

7. Section 103 of the Constitution entrenches the independence of the Judiciary in the following terms:

“(1) All Courts and all persons presiding over these Courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority.

(2) The Judiciary shall have jurisdiction over all issues of judicial nature and shall have exclusive authority to decide whether an issue is within its competence.

(3) There shall be no Courts established of superior or concurrent jurisdiction with the Supreme Court of Appeal or High Court.”

Those who seek to influence the Courts in their exercise of powers, may try to do it directly or indirectly, often times they would want to appear to stand on high moral ground. Thankfully, this Judiciary has resisted and will continue to resist such attempts in unequivocal ways, regardless of whatever quarter they may come from. That is the commitment of the Malawi Judiciary to the rule of law and Constitutionalism.

8. The Judiciary is subject to the law like any person or authority. In its role in the application and interpretation of the Constitution, it is guided by Chapter II of the Constitution. The Judiciary takes cognizance of the fundamental principles on which the Constitution is anchored as contained in Chapter III of that Constitution. The Judiciary like every public

institution, must remain accountable to the people of Malawi. The law itself spells out accountability mechanisms within the Judiciary and the judicial system. The former Lord Chief Justice Ian Burnet of Maldon who gave a public lecture at the University of Malawi last June calls such judicial accountability as independent accountability.

9. Judicial accountability is the people's agenda. Sometimes entities which Professor Eage Kanyongolo once called middle men hijack the people's agenda and clothe it with their own agenda, before beginning to run with it. This tends to create some misconception or misunderstanding on the true meaning of judicial accountability. This Judiciary shall remain accountable to the people of Malawi, for that is a Constitutional imperative supported by various statutes and legal principles. Indeed, the Judiciary is committed to observance of the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct and the Commonwealth and Latimer House Principles. Our adherence to the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors developed by the International Commission of Jurist is vital for the proper function of justice system founded on the rule of law.

10. We celebrate the commencement of the 2023/2024 Judicial Year with a firm commitment to serve people better. We reflect on the strides we have made as a Judiciary since January 2022 in our efforts to serve the people better. We also look at some of the challenges we have encountered and our efforts to address them. As we strive to serve people better, we want to advance open justice, recognizing that justice belongs to everyone. I must say at once that we remain resolute to do what is right according to law even in the face of the most fierce criticism against the Judiciary, whether it is justified criticism or speculative.

11. In the period under review, the Judiciary has taken notable steps to improve service delivery and access to justice. These notable steps have covered both legal reform and institutional reforms. A law was passed that enhanced the civil jurisdiction of the magistrate Courts. Another law of significant note is that which establishes the Financial and Economic Crimes Division of the High Court. Some attendant rules have been put in place including a Practice Direction for the proper functioning of new High Court Division, even as we continue to refine our mode of operating the Court. In this regard, I am happy to announce that the Financial and Economic Crimes Division of the High Court will be formally launched soon at Lilongwe.
12. We have also put in place various policies that would guide our way of doing business as we strive to serve people better. Many of the policies were on display at the Judiciary Open Day held yesterday 5th October 2023. Work or Sexual Harassment Policy is at an advanced stage and we trust that it will be in place within the coming year.
13. We have re-organized and rejuvenated our internal Committees for better management of our work. We have a Judiciary Complaints Handling Committee in place and functional, as a first step toward establishing a Judiciary Complaint's Commission. We have committed ourselves to digitizing the Judiciary and the Digitization Committee is working hard in this regard. We are tapping lessons from Rwanda, Uganda, Kenya, Tanzania, Zambia and Zimbabwe who are all ahead of us. We have a vibrant Judiciary, trustful Integrity Committee which spearheads the fight against corruption in the Judiciary.
14. A key aspect of better service delivery is a good performance management system. Our Performance Management Committee has developed the tools for a

performance management system that responds to the complex nature of Judicial work. As of January, this year, we began implementing some aspects of this Performance Management System by requiring individualized monthly reports from judicial officers. Our counterparts in Rwanda and Zimbabwe have integrated their performance management system in the electronic case management system so that it is fully automated. In their case, they get integrated reports on performance management and that puts every officer on the alert. That is the system we are working to adopt and adapt.

15. Regarding the perennial and almost universal problem of backlog and delay, we have put in place internal mechanism that seek to address the problem, even if it means mitigating it. More importantly, we have a Delay Reduction Task Force that is made up to key stakeholders in the administration of justice. That Task Force has worked hard to identify areas of collaboration to address backlog and delay. Theirs remain work in progress and I look forward to receiving their final report for action.

16. The work of the Judiciary and the pivotal role it plays in upholding the rule of law and Constitutionalism is recognized by all well-meaning persons within and outside the country. Beside the much-publicized Chatham House award to the Malawi Judiciary, Malawi has received recognition from many persons at various fora. The former Lord Chief Justice of England and Wales, Lord Bennett of Maldon expressed in clear terms his utmost admiration of the Malawi Judiciary when he visited this country in June 2023. In August 2023, the Malawi Judiciary received a prestigious award of Medal of Merit in Leadership from the African Bar Association, a continental body of national Law Societies, in recognition of its outstanding work. To this, I must add that yours truly has been recognized locally by the National Planning Commission as being one of the Champions of

MW2063, an accolade I share with the entire Judiciary.

17. Many of us present here will remember that the Judiciary co-hosted a National Conference on Separation of Powers with the Executive and the Legislature. It was one of its kind that received a lot of admiration by local and international individuals and institutions. It is no mean achievement to have had such a Conference.
18. It is important for me to point out that we have revived the production of Annual Reports to better inform the people we serve and other stakeholders about our operations. We have the 2021 and 2022 Annual Reports produced in quick succession. We hope to remain up to date with our annual reports. These reports will continue to give a fair view of what we do as the Judiciary.
19. We believe that an improved working environment is conducive to serving people better. We have introduced a wellness programme to deal with issues of stress management and personal good health of staff. Make no mistake the job by a judicial officer is stressful and requires stress management.
20. Regarding infrastructural development, we continue to rehabilitate Courts across the country, with support from development partners. The Court structure that accommodates the Supreme Court of Appeal at Chichiri now wears a new phase. Rehabilitation of Dowa Magistrate Court will soon be completed. Construction of Chipoka Magistrate Court and Bolero Magistrate Court is underway although it has stalled for some reasons. We are working to ensure continuation. In the past year, we had Likoma Magistrate Court, Rumphi Magistrate Court and Balaka Magistrate Courts launched with support from the Chilungamo Programme of the European Union. We are profoundly grateful.

21. In the area of capacity building, we continue to facilitate training and exposure both locally and internationally although we are constrained by financial resources. We currently have no less than three individuals pursuing doctoral studies, at least two pursuing master's degree studies while others are studying for first degree and diploma in relevant fields. Our staff needs to be given the opportunity to improve themselves academically while they continue rendering service to the people.

22. We have developed close links with other judiciaries in Africa and beyond. This has provided us with the opportunity to learn how they conduct Court business, especially in the area of improved access to justice. Only a few months ago, the Canadian Chief Justice and I exchanged letters and shared our annual reports. I learnt from him that their Supreme Court which for a time used to sit in Ottawa only has now begun to sit in Quebec as well. The Zambian Supreme Court sits in Lusaka and Ndola while the Zimbabwe Supreme Court sits in Harare and Bulawayo. We have also learnt a great deal from other jurisdiction on the use of technology and virtual Court hearings. In the spirit of advancing access to justice, we prefer to be more open to advancements than to continue looking inwardly as we previously used to. We have embarked on a trajectory of transformation and we are willing to learn from best practices around the globe.

23. For more of our achievements in the period under review, I would refer those who are interested to look at our 2021 and 2022 Annual Reports. We also have reports on infrastructure developments for the period 2021-2022 which are available to be accessed by those who may be interested.

24. Our 2021 and 2022 Annual Reports also detail out our challenges in the delivery of justice and judicial services. Here, I can only refer to a number.

First and foremost, is inadequate funding for the Judiciary. The funding that the Judiciary gets is inadequate to cater for both operations and implementation of activities. This negatively affects our work in the Judiciary. For example, in 2020/2021 financial year we received 0.6% of national budget when we required a minimum of 3% of the national budget. In 2021/2022 financial year, we received 0.5% of the national budget when we required 3% of the National Budget. In 2022/2023 financial year, we received 0.7% of the National Budget when we required 3% of the National Budget. In the 2023/2024 financial year, our budget is pegged at 0.6% when we require 3% of National Budget known at every opportunity without success. We estimate that an average case would cost MK500,000 from start to finish.

25. The other challenge I must mention is shortage of staff, particularly judicial staff. Our last count was that we have 301 judicial officers in this whole country who must share annually an overwhelming case load of about 110,000 according to our last count. This gives an estimated rated of 1 judicial officer to 365 cases, meaning that each judicial officer must sit every day including Saturdays and Sundays to hear and conclude one case. That does not sound humanly possible. Only last week, I visited Courts in Nsanje district and found a Lady Magistrate at Bangula Magistrate Court attending to a large crowd of Court users. When I checked her register of cases, I discovered that she had registered close to 500 civil and criminal cases. She is busy every day and sometimes she works unto the night just to attend to as many litigants as possible. Granted that some cases take longer than others, we have determined that an average case would last 10 months from start to finish with the judicial officer doing nothing else. I go into these details not to put up a defence for the Judiciary, but for everyone to appreciate that judicial work is not a piece of cake.

26. One other challenge we face in justice delivery is that working with other key stakeholders in the justice sector has not always been easy. The Courts receive cases and cannot send away litigant simply because it is overwhelmed by the work. Then, there are other actors in the justice sector who do not render their services in a timely manner so as to allow the Courts to do their work. That negatively affects the work of the Court. Where there is lack of collaboration among the key players in the justice sector, justice suffers.

27. I could go on enumerating the many other challenges the Judiciary faces in the administration of justice, but time would not permit. That is why I must turn to some of our intervention to ensure that we serve people better. We are determined to introduce a more efficient electronic management system which will be integrated with an electronic performance management system. We intend to increase awareness in the existence within the Judiciary, a Judiciary Complaint Handling Committee, which would deal with complaints about the service of justice delivery in a timely manner.

28. The Judiciary Open Day, we introduced yesterday, will continue annually for us to be able to promote open justice and equality before the law. We want to accelerate rehabilitation of Courts to facilitate access to justice. Nyachilenda Court and the Fatima Court in Nsanje are dysfunctional, having been submerged and swept away by flood waters. People have to walk for nearly seventy kilometers to access justice at Nsanje Boma and Bangula, respectively. It is our commitment to bring justice closer to people through mobile Courts and assizes to promote access to justice.

29. I must conclude by saying that we are committed to improving justice delivery throughout the country as we bring justice closer to the people, promote access to justice and advance open justice. We will continue to

collaborate with other stakeholders in the justice sector so that we all advance justice which is the agenda of our people. We trust that other partners who work with us will work with us by not giving us prescriptions, but to work with us as we execute our Constitutional mandate. Justice belongs to the people, rich or poor, represented or unrepresented. Justice is for all.

With these remarks, I declare the commencement of the Judicial Year 2023/2024.

Thank you for kind attention.