REPUBLIC OF ZAMBIA

THE JUDICIARY

PAPER PRESENTED AT THE INAUGURAL NATIONAL ANNUAL PROSECUTORS' CONFERENCE UNDER THE THEME:

"Economic & Financial Crimes Courts: Challenges and the Future"

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21st August 2023

Avani Victoria Falls Resort Hotel
Livingstone

Introduction

I am happy to have been invited to this inaugural Annual National Prosecutors' Conference here in Livingstone under thetheme: ‘Prosecutorial Excellence in Economic and Financial Crimes in the

Digital Era: Resilience and Reinvention of Strategies.’

It is indeed fitting that as prosecutors you should periodically assemble to take stock of the successes, failures and challenges that you are recording in the discharge of your very important role, as well as to reflect on the evolution and ever changing face of crime, especially that of an economic and financial nature, so that you can reinvent strategies wherever possible. In point of fact, this conference should also bring out pertinent issues such as the impotence of substantive and procedural laws, if any, as well as proposals for possible reforms.

The theme for the conference is entirely apt. The advance in communication technology in the digital era has brought with it both benefits and significant risks for regulators and law enforcement agencies in battling economic and financial crimes. We know that increasingly a host of this kind of crime are being committed in virtual space as criminals are taking advantage of the rapid technological advances which facilitate the commission of crime anywhere in the world and at any time. Yet technological advancement has also made the detection of crime and the sharing of information easier in many cases.

The cyber space compounds the complexity of economic and financial crimes because criminals continue to be highly innovative in the cyber-space thus presenting considerable difficulties in investigation, prosecution and adjudication. It is expected that investigators, you prosecutors and indeed us adjudicators should up our game if justice is to be done to accused persons. Investigators and you prosecutors must be well-equipped with the foundational markers on how to effectively gather evidence, preserve it in admissible form and present it in court without attracting credible objections from the defense. It is at forums like this one that some of these issues can best be ventilated and where best practices can be shared.

I am grateful to have been requested to make a presentation on 'Economic & Financial Crimes: Challenges and the Future'. I have taken what the French call *choix de l'orateur* (the speaker's choice) to change slightly the topic for my address to read 'Economic and Financial Crimes Courts: Challenges and the Future' as this contexualised more concretely the real practical issues that we should be addressing as we ponder prosecution of these crimes in the future.

As you are well aware, the economic and financial crimes courts which have been tasked to deal with this category of crimes, were established barely two weeks after my inauguration as Chief Justice. The courts are thus only one year seven months

old. To be sure, in this whole period, the Judiciary has had the torrid task of rebuilding and rebranding itself at all levels, with varying levels of success. Yet, the happenings in the economic and financial crimes courts in this short period, have taken center stage and have provided sufficient reason for all of us to want to identify what is working and what isn't working, as well as the debilitating gaps in the law and procedure.

In order to consider the future prospects of these courts and the crimes they handle, we necessarily have to understand where it all started, that is to say when and how they were established, and where we are today. My presentation should thus begin with the establishment of these courts, the reasons for the establishment and the reaction to their creation, the performance of the courts thus far and the challenges. I will then venture to hazard what the future of these courts looks like before I conclude.

The establishment of the economic and financial crimes courts

There is definitely something seriously wrong when public resources meant to develop and fund public services and amenities such as hospitals, schools, markets, roads and bridges, are corruptly diverted by selfish persons entrusted to superintend over public resources, to build their own extravagant private houses and sustain a vainly high lifestyle for themselves and their immediate families.

There is equally something wrong when illiterate, unemployed youths and adults display unexplained wealth in hallucinatory quantities which even employed middle class professionals can ill afford to have in their lifetimes.

In the ongoing fight against economic and financial crimes, many countries have established specialised judicial bodies, divisions, or designated a set of adjudicators within the regular institutions of justice, to focus exclusively or substantially, on such crimes. This is because specialization is known to enhance efficiencies to better deal with these crimes. Many countries which currently have no such courts or bodies, are considering establishing them to harness the adeptness that come with specialization.

In staggering numbers, the Zambian people have, plainly expressed their revulsion for the scourge of corruption and related vices sometimes manifested through the display of unexplained wealth that in recent years, engulfed the public life of our nation to the detriment of our economic progress. There seemed to have been systemic weaknesses and even failure in the justice systems to effectively deal with economic and financial crimes, thus tending to make corruption and related offenses appear to be a low-risk business with high returns.

Kinship patronage, cronyism, and a sense of entitlement in many cases accounted for delays in prosecution of suspects, questionable acquittals on technicalities, and generally an air of impunity.

It has been the hope of all Zambians of goodwill that law enforcement agencies will rise to the occasion to eliminate or minimize corruption and related vices so that money saved from these offences are channeled into needy sectors such as education, health and infrastructure.

Following in the lead of many countries that have established specialised judicial bodies, specialised divisions of courts or a set of adjudicators within the regular institutions of justice, to focus exclusively or substantially, on economic and financial crimes, the response of the Government of the Republic of Zambia to the strong, popular public sentiment to arrest the deleterious effects of these crimes, was to declare its *volontepolitque* (political will) by pledging its commitment to do battle with graft. Through the maiden address to the National Assembly, during the ceremonial opening of the 1st Session of the 13th National Assembly on 13 September 2021, the Seventh President of Zambia, Mr. Hakainde Hichilema, stated that:

> *We will wage war on corruption and not spare any expense to ensure that perpetrators are made to account for their impropriety. There will be no sacred cows in the fight. We will increase the benefits of being honest and*

the cost of being corrupt. To enhance transparency and accountability in our national affairs, we will review the policy and legal framework for oversight institutions to enable them to effectively fight corruption and economic crimes. We will increase funding and enhance operational independence of oversight institutions. Further, we will introduce fast-truck stolen asset recovery mechanisms and courts for corruption and economic crimes. Corruption as a vice will be fought on all levels collaboratively by the relevant institutions.

The establishment of a special court at High Court level, christened the Economic and Financial Crimes Division of the High, was done using the powers conferred in the office of Chief Justice by Article 133(3) of the Constitution, while the designation of a cohort of Subordinate Court magistrates to handle corruption and other economic and financial crimes on a fast-track basis was made pursuant to the vast administrative powers conferred on the Chief Justice by the Constitution, the Subordinate Court Act and the Criminal Procedure Code Act.

The announcement was made about three months after the Presidential address to the National Assembly. It was in a speech by the Chief Justice at the opening of the Ceremonial Criminal Session of the High Court on 7 January 2022. The theme was 'when patriotism meets justice'. In aligning the creation of the courts to the theme, the Chief Justice stated thus:

It takes a patriot, wherever they are, to fight corruption and to resist the selfish appeal of corruption ... Patriotism demands that state institutions with a nationalistic culture and personnel throw the book at those who rip-off public resources to deny poor village school children aclassroom desk to sit on; the pregnant rural mother a decent place to deliver in; the shanty compound family clean water and sanitation; the sick citizen access to essential medical care and the economy the much-needed opportunities for growth for the happiness of the greatest number of our people.

Patriotism abhors impunity. Criminal prosecution must be instituted against alleged wrongdoers who should be afforded a fair opportunity to answer to allegations against them. Crimes of an economic nature, especially, deserve expeditious disposal because of their effect on the economy of the country.

Not unexpectedly some people in the polity took umbrage at this development because it entailed change, change designed to strengthen the weak accountability mechanisms at the level of the courts. That kind of change was naturally bound to be resented and even resisted by those who have benefitted from the weaknesses in the system. Change ordinarily has the tendency to affect adversely certain vested interests that profit from the status *quo* and may cause considerable irritation for some.

Misgivings about the new courts and justification for opposition

The historic announcement of the establishment of the fast track courts was intended to be an initiative to compliment the collective wish of the Zambian people to do war with graft. Instead, it acted like some form of itching powder on some of our citizens who expressed some misgivings. They were not enthused with the creation of the fast track economic and financial crimes courts for reasons which they articulated.

I will come back to the publicly given reasons for the opposition to the establishment of these courts. First, let me state that it is significant to always bear in mind that people who derive pleasure in habitually involving themselves in economic and financial crimes are quite often powerful individuals in society and tend to have the inclination to fight back any war waged against these crimes.

The risk of a push-back to all the corruption efforts being made at policy level, by powerful persons and by the very individuals being called upon to account, or through their proxies, is real. It is not uncommon for them to employ rhetorical narratives designed to buy public sympathy against measures taken in good faith to stem corruption and related vices.

There may also be unwarranted attacks on institutions or individuals in the criminal justice chain — from investigation to conviction or acquittal, that can

potentially undermine the effectiveness of the institutions or individuals engaged in bringing culprits to book. There may equally be calculated moves to make any of the institutions involved, i.e. the Law Enforcement Agencies (LEA), the National Prosecutions Authority or the Judiciary a casualty in the fight back. In the face of all these potential adversities there is need for each one of these institutions and individuals working in them, to remain on guard, steadfast in protecting their independence and integrity as they deal with economic and financial crimes.

Four reasons have repeatedly been publicly touted to anchor the opposition to the setting up of economic and financial crimes courts. First, that because the announcement to establish these fast track courts was first made by the executive when the President addressed the National Assembly, the Judiciary should never have created economic and financial crimes courts as in doing so it was acceding to the dictates of the executive and, thereby, compromising its independence.

Second, that the real motive behind the creation of these courts was ethnic and political retribution against former political governors. Third, and this is closely related to the second and fourth reason, that the whole fight against corruption is selective in that it targets past corruption and not present corruption and finally that the creation of the courts was discriminatory and, otherwise, unconstitutional as the Chief Justice did not have the power to create these courts.

It is enormously tempting to want to publicly dismiss these claims as mere political polemic. But the Chief Justice, as you are all aware, is not a politician and cannot stoop so low as to give vent to realms of political fantasies. That would be unconventional. Suffice it to observe that the argument based on the timing of the announcement and the independence of the judiciary is without substance.

It is fallacious, and totally misconceived, especially coming from persons who seemingly are fairly enlightened, and thus assumed to have the very basic knowledge of Montesquieu's separation of powers doctrine, to imagine that any one of the three powers of the State can ever operate in complete isolation from the others, or indeed that the three arms of government should ever be at war with each other, or even that one arm is entitled to frustrate the lawful intentions of another arm. Separation of powers and autonomy of one arm from the others does not entail any these things nor does indeed the concept of checks and balances.

Does not the Holy Book record in all three synoptic gospels (Mathew, Mark and Luke) that a house divided against itself cannot stand? What the critic fails to appreciate is the simple common sense point that the three arms of the State are like cogs in the same engine. For the State to operate normally, the three arms are expected to operate in harmony while maintaining the separation of powers and jealously guarding their autonomy.

The argument of unjustified targeting of alleged ethnic and political 'foes', presupposes that investigators and you prosecutors are complicit in breaching the basic tenet of the rule of law, namely, equality before the law and non discrimination. If there is any suggestion to prosecute anyone on any basis other than the alleged involvement of the suspected individual in criminal conduct, the onus lies with you as prosecutors to question and reject any suggestion for being a blatant abrogation of the rule of law. And I will come back to the rule of law shortly.

The significant point is that economic and financial crimes courts, like all others courts, do not control what cases are brought before them. They have no choice who comes to court or who is indicted and prosecuted. They do not carry out any criminal investigations either. They are but only dispassionate arbiters. Once a case is brought before a court, it must be dealt with by the court strictly in accordance with law.

Luckily, it seems that the narrative on targeting certain persons for victimisation on discriminatory grounds finds no proper justification in law or in fact. The argument cannot be empirically validated in view of the publicly known facts that the variety of persons appearing before these courts transcend political, ethnic and other barriers. If one cared to examine the profiles of persons accused and appearing in these courts or indeed already convicted, one is bound to discover that

they in fact constitute such an elaborate mosaic, ethically and politically, as to render the claims of the critics absolutely untenable, if not altogether preposterous. Law, I would like to believe, remains blind to these superficial differences.

The argument is also weak because it fails to consider the genesis of the troubles of most of the accused persons now appearing in these courts. Many of them were, by and large, the beneficiaries of the absence at some point in the past of a deliberate practice of embracing ethnic heterogeneity during which ethnic patrons were routinely doling out favours and benefits to members of their own ethnic communities many of whom had close connection to public office or public resources. The ethnicisation theory is only complete and meaningful if it is contexualised in its historical origins. Applying the rules of probability should leave no one in doubt as to who are likely to have business with the new courts.

The selective prosecution argument and the concentration on past corruption as opposed to current corruption, is similarly addressed in the reaction to the third argument. One can add though that the argument is self-defeating to the extent that it recognizes that there was corruption in the past which is prosecutable and is being prosecuted presently, yet the argument does not go further to show that present corruption, which has not yet been prosecuted, will not be prosecuted in the future. In any case, the underlying assumption that all old corruption is being

prosecuted and all new corruption is not being prosecuted appears and therefore, will never be prosecuted, appears to me to be logically problematic in itself.

I will reserve my comments on the fourth claim that the courts are unconstitutional as the question has been escalated to the Constitutional Court which is yet to determine it.

Since the creation of the economic and financial crimes courts we have at various occasions tried to clarify that these courts were set up for the high purpose of doing justice to suspects and victims alike of these crimes and stemming long delays in concluding criminal cases of an economic and financial type, and in some cases, tackling complete impunity for those involved in this kind of cases.

As regards the delayed conclusion of economic and financial crimes, the recently decided pre-economic and financial crimes courts corruption case of *Stella Chibanda Mumba, Katele Kalumba, Faustin Mwenya Kabwe and Aaron Chungu v The People* is a text book kind of example of the lethargy in a criminal justice system. From arraignment on corruption and abuse of authority of office charges in 2004, the prisoners were convicted by the Subordinate Court in 2010, the year when the Forfeiture of Proceeds of Crime Act was passed. They appealed to the High Court which confirmed their conviction in 2013.

Not unexpectedly, they took out a further appeal to the Supreme Court. The latter court only confirmed their conviction in 2022. Nearly twenty years of interaction with the legal system represents a great deal of human anguish and expense, much of it needless.

To add salt to injury, as the quartet had all this while been on bail pending appeal, they only began to serve their five years jail term nearly twenty years after they were first accused of the crimes. This was clearly an unsatisfactory state of affairs as it bore all the hallmarks of inefficiency in the justice system. It is this kind of delays that the fast track economic and financial crimes courts partly intend to address.

In a speech he made at the official opening of a training workshop on economic and financial crimes, the Chief Justice of Zambia stated, in relation to the need for speed in disposing of corruption cases, as follows:

> *Our courts must ensure that cases bordering on corruption and other economic and financial crimes are dealt with expeditiously so that, where appropriate, illicitly acquired public assets are recovered and quickly returned to the owners, i.e. the public, for its use. As well as instilling public confidence in the fight against corruption and dissuading others from engaging in this vice, dispatch in concluding these cases will also ensure*

that those facing corruption allegations do not carry the burden and stigma for too long before their fate is determined, considering the unintended damage such allegations do to the presumption of innocence.

Additionally, considerable delays in processing cases of an economic and financial nature increase the risk that accused persons, or their allies may exert undue influence on witnesses, tamper with evidence, or take other action to interfere with the ordinary and impartial operation of the justice system. Not infrequently, we have heard of cases of missing case records, or exhibits, disappeared witnesses, compromised adjudicators, etc., when cases drag on for too long. While such concerns are not unique to economic and financial crimes cases, they are especially acute with respect to such cases.

In a conference paper presented by Chief Justice Mumba Malila here in Livingstone in 2022, he observed in relation to delays in concluding criminal proceedings that:

...it is critical that courts expedite corruption matters and avoid delays. In this regard courts should shun unnecessary adjournments as some accused persons use this period to interfere with cases. The longer a matter drags on the more the wind is removed from the sails of its accountability vehicle and the more potentially deleterious technical issues creep in.

On 14 March, 2022, in his remarks at the official opening of a workshop on economic and financial crimes, the Chief Justice stressed the point that economic and financial crimes were not created for vindictiveness but justice when he stated that:

> *The courts are not intended under any circumstances to be used as an avenue for political persecution or vengeance. They are intended to do justice to all manner of persons and at all times. Accordingly, the overriding obligation of both adjudicators and prosecutors in those courts should be to attain justice. Justice first, justice second, justice third and justice always. Justice for the accused individuals and justice for the victims of corruption — the public. After all the rule of law which these courts must uphold requires that public officials, past and present, are held accountable for their stewardship of public resources. The ultimate beneficiaries of the existence and work of these courts indeed, of the actions of all of those who man them, are the Zambian people.*

Public engagement necessary in the fight against corruption

The involvement of members of the public in fighting economic and financial crimes is crucial if significant progress is to be registered. The first thing to bear in mind is that whether they realise it or not, and whether they, in the first place are

even conscious of it or not, the citizens of any country are the key victims of economic and financial crimes.

They suffer when resources meant to improve their lot such as through the provision of better roads, medical facilities, subsidized farmer inputs etc., are diverted for the private use of a few selfish individuals and their friends and relatives. They are also the culprits when they pay bribes. The converse is also true. They stand to benefit from better enforcement of laws against these crimes. The deterrent effect of prosecutions prevents the looting dry of the public purse.

The public must thus be made to understand that prosecuting suspects is for their ultimate benefit. More significantly the educational side of corruption must be strengthened by the Anti-corruption Commission so that the public is sensitized to own the whole anti-corruption project. They must be encouraged to desist from engaging in corruption and similar vices as well as from being accessories. Members of the public must be used as useful stoolpigeons and whistle blowers in the corruption fight without opening them up to reprisals and victimisation.

If robust safeguards and protection of witnesses and informers are in place, and possibly some incentives not amounting to bribery are availed, it will be easy and attractive for those that have information on economic and financial crimes to

come forward and volunteer it and to be willing witnesses during prosecution. Civil servants or private sector employees reporting cases of these cases are in practice not adequately protected against reprisals. Provisions for whistleblower protection as contained in the Public Interest Disclosure Act appear so far not to have proved sufficiently useful in encouraging whistleblowers and the Act may well be a candidate for legislative review.

Members of the public always want to know whether the institutions tasked to fight economic and financial crimes including the Police, the Drug Enforcement Commission, the Financial Intelligence Centre, the National Prosecutions Authority, and the Judiciary, are truly committed to take action against crimes; whether they are indeed being truly accountable.

When citizens consider these institutions to be ineffective, toothless bulldogs which only pay lip service to combating sleaze, or if they perceive corruption or the application of double standards to be widespread within these institutions, particularly when they see their fellow citizens who are bribe payers or active bribe recipients, accessories or possessors of unexplained wealth on a grand scale, getting away with it, their motivation to be part of the fight against economic and financial crimes diminishes and they themselves end up nourishing these crimes. The converse is that when these institutions fight these vices fairly and seriously,

the role of the citizen in the corruption equilibrium shifts and potentially helps break corruption and related vices.

The nature of court sentences in economic and financial crimes cases will also have a significant effect on citizens' attitudes in that appropriate sanctioning of convicts by the courts might deter future criminal acts and might colour positively citizens' engagement against economic and financial crimes. However, many people who have previously been found guilty of corruption and related offences have shown no remorse or humiliation no matter how antipathetic the public is to them.

Given the prevalence of economic and financial crimes in Zambia and the grand scale on which some of them are committed, the prosecution must in all proven cases, urge the courts to show aversion to corruption by imposing deterrent sentences (the maximum) allowable under the law, and consistent with the relevant principles of sentencing. Persons found guilty of corruption should never be given a slap on the wrist.

The performance of the prosecution and public expectation

In relation to the prosecution specifically, there is much to be said about the relationship between the prosecutors' performance and citizens' attitude towards corruption. The public expects the National Prosecutions Authority to discharge its duties vigorously, with courage, without fear or favour, ill-will or malice, in accordance with the rule of law.

Entrenching the rule of law is the overriding consideration of public policy in Zambia and the prosecution must promote it. And the rule of law requires that criminal process, especially, is invoked against a citizen for no other consideration but his/her involvement in allegedly criminal activity. To apply the rule of law otherwise is to subvert or pervert it. It also requires that accused persons are tried with due regard to fair trial provisions, including the presumption of innocence and the guarantee of a speedy trial. Anyone who employ Fabian tactics to delay or frustrate legal proceedings invariably contradict the tenets of the rule of law.

The point I am making is that without the rule of law, there will be arbitrariness and justice will be debauched. The law will not be enforced consistently, and criminal proceedings may be targeted at persons based on political rivalry or other untoward motivation. Our critic will be justified to grumble. Justice may also be determined by how much power or influence a man holds or how much money he is willing to pay.

Without the rule of law, the rule of the jungle reigns and the weak fall victim to the strong and nobody is safe. It is unreasonable and unfair for the so-called high-profile criminal cases involving the offences of fraud, theft by public servant, abuse of office, possession of property reasonably suspected to be proceeds of crime and money laundering, to drag on for years, whilst criminal cases filed against perceived ordinary members of society are concluded within short periods of time in some cases lasting only between six months and one year. These situations intensify the perception of inequality in our society. It is antithetical to principle of equality under the law which is at the heart of the rule of law.

A venal prosecution is the very antithesis of the rule of law. Yet, we cannot ignore the fact that many citizens out there perceive persons involved in the corruption fighting chain as potentially corruptible and tend hold low levels of trust in them. Any allegations of corruption in the prosecution function are often a discouragement to citizens who seek justice. Prosecutors must, therefore, be concerned about such trust problems and how to overcome them.

The performance of prosecutors must send convincing signals to members of the public that the prosecution cares about economic and financial crimes and are not merely performing routine duties. Those signals are only credible if they meet three threshold pointers: first, the prosecutors themselves manifesting personal

integrity and leading by example. Second, prosecuting economic and financial crimes cases in a timely manner, and third, remaining impartial and professional in the face of pressure or temptation of any kind.

As regards the first of these, prosecutors should show, promote, and encourage their own personal integrity, honesty, and professionalism. They must be on guard against temptations by the rich and powerful who may be liable to prosecution on economic and financial crimes charges. Often, high-profile individuals measure well the legal consequences they will deal with before committing acts of corruption. They will always try to get away with criminal behavior.

Concerning the issue of speed, it is critical that the prosecution plays its part in expediting the completion of economic and financial crimes matters and avoid delays as much as possible. The prosecution should always try hard to ensure that they are not the cause for adjournments, bearing in mind that the longer a matter drags the more potentially deleterious technical issues creep in.

It is significant to bear in mind that although these are fast track courts, they are not exempt from the constitutional imperative to obey fair trial and due process provisions. Due process must be seen strikingly to work. Prosecutors cannot set-aside due process considerations no matter how much opprobrium this incurs to them. This is the spirit that should animate your work as prosecutors.

Every accused person appearing before them is entitled to be afforded sufficient time and facility to put up his/her defence. Beware, however, that many accused persons master the art of abusing court process by delaying proceedings as much as possible when the odds against them abound. Some even feign illness routinely. This entails tolerating some delays of sorts.

The third aspect requires that prosecutors remain independent and impartial. This is because a fair and independent prosecution is a vital component in sustaining people's trust and confidence. Prosecutions must be based on evidence and the law. They must not be unduly influenced by external pressures and factors such as political statements or indeed the prosecution's own prejudices. Here, I mean pressure from both those in Government who may express reservations on the performance of the prosecution and those outside Government who may pour cold water on the corruption efforts.

The National Prosecutions Authority must remain an independent, non-partisan body, with the relevant professional capability, to undertake the prosecutions against economic and financial crimes so as to hold public officials, past and present, accountable for their stewardship of public finances.

The performance of the economic and financial crimes courts

Since their inception these courts have, against adversities done their best. The trials of persons before these courts are being conducted in the normal manner, with the safeguards that the law affords to all accused persons, so that due process is respected.

Challenges

1. *Infrastructure*

Among other challenges they have faced are inadequate court rooms granted that they have to share limited court and office infrastructure with ordinary courts. We had to reclaim some court rooms at the Boma Local Court in Lusaka to be used by some of our magistrates from the Magistrates Complex in order to give way to fast track economic and financial crimes courts. Central government has set aside resources for the economic and financial crimes division at the High Court to have its own offices along Alick Nkhata Road. Arrangements are been made to finalize preparations for these courts to be made usable.

2. *Generalist adjudicators and capacity building*

The adjudicators assigned to these courts, though supremely qualified were for most part generalists who have to be reoriented. Even matters such as the burden

and standard of proof in some economic and financial crimes require some delicate treatment which might vary from ordinary crimes.

These adjudicators need sufficient capacity to process the information in complex cases. They require to be invested with the necessary fortitude and forensic acuity. The process of training and reorientation is slow as there is paucity of training opportunities, time and resources to undertake them. This process is ongoing, for this is the only way to endow these adjudicators with the necessary tenets and values including proficiency and a sense of justice.

3. *Unnecessary preliminary applications and objections*

The nature of these crimes is technical. The stakes are high. Since their inception the courts have had to contend with many preliminary issues and objections of a novel kind. While many of these are well founded and ought in the interest of justice to be raised and settled, others are plainly uproarious with a nuisance value. They are designed to frustrate, if they can, court proceedings against them.

Many suspects through their lawyers, are prepared to employ all manner of tactics, some of them guerilla type to escape conviction. These in many cases translated in delays in many cases. It is hoped that these objections having been ruled upon are unlikely to be repealed and future cases will progress a lot more smoothly.

4. *Prosecutorial mismanagement*

The courts are neutral in their treatment of suspects appearing before them. Their role is to evaluate the evidence properly presented before them and make decisions based on the evidence and the law. It is not the role of the courts work on allegations alone or to adopt a no smoke without fire approach in handling these cases.

It bears emphasis that there is absolute need for investigators and prosecutors to always do their work thoroughly before they arraign suspects. Some cases collapse owing to poor investigations and a poor attempt in piecing together the material evidence.

In some case, the charges are quite poorly crafted giving inspiration for numerous preliminary application which occasion delays and sometimes necessitate amendments to charged. In some cases, matters have to recommence. In extreme cases accused persons walk to freedom on technicalities. It is not the role of these courts to make cases for the prosecution or to repair broken cases. Courts are not intended to supplement or correct the prosecution's poor offering.

Evident unpreparedness' on the part of the prosecution has in many cases contributed to the delayed conclusion of criminal matters.

Progress scored

Although indeed many cases are laboriously going through the process rather slowly, there is noticeable progress being scored. Cases are steadily ripening towards judgment. In many instances, proceedings have progressed to the case to answer or defence stage. Conclusion of many of these cases might well be in sight.

Although the courts have thus not operated optimally, a number of cases have been concluded and some convictions secured and a handful of discharges and acquittals registered.

In the first year of their operation, 2022, a total of 59 cases were filed country-wide. 14 of these cases have resulted in convictions, 7 withdrawals and 3 *nolle prosequi* and 1 acquittal. Other cases carried forward are on-going and are at various stages.

In 2023, as at 21 July, a total of 44 new cases were filed countrywide. Of these cases, there have been 4 convictions, 1 discharge and no acquittal. Other cases are proceeding at various stages.

The recent conviction of the famous 48 houses couple, Charles Loyana and his wife Susan Loyana and their subsequent sentencing to three years in quod, by the economic and financial crimes court is a stark reminder that though they may turn slowly, the wheels of justice turn nonetheless.

The future of economic and financial crimes courts

Regardless of the teething problems that are being experienced in these courts, I have no doubt in my mind that we in the Judiciary are on a positive and sustainable path into the future even whilst we grapple with the continuing financial and infrastructure woes and challenges.

I have boundless confidence that in reifying the political will shown by the Government thus far to deal with the challenges in the justice sector, it will expedite the consideration of the options available to most suitably address the issue of infrastructure deficits and other logistical challenges that so gravely afflicts the economic and financial crimes courts today. It remains my fundamental conviction that their operations will have tangible long-term benefits for our people in vindicating the innocent and condemning the guilty.

Admittedly, the pace of disposal of many matters in the economic and financial crimes courts has been slow and has provoked the patience of the people whose resources were allegedly stolen. Many people out there are agitated by the tardy prosecution process. They want results quickly. And we all realize that the patience Zambians who want to see recovery of the resources they have been robbed of, has been stretched to breaking point.

Yet, some persons undergoing trial, especially those on bail, have in exercise of their fair trial rights, hopped from one court to another, raising sometimes

unnecessary preliminary objections and seeking interlocutory orders that have admittedly delayed determination of matters. Needless to state that in some cases, this might in the long run possibly work against them.

However, with all the lessons learnt, the performance of the economic and financial crimes courts are being improved through various ways to enhance access to justice for accused persons and the victims of crime alike by accelerating the disposal of criminal cases.

I see a future where prepared prosecutors in these courts, armed with strong evidence gathered by competent investigators will turn the tide of negativity about their seeming unpreparedness when they appear in these courts toward actions that exude optimism and fair trial sensitive dispatch. This must be coupled with realistic and honest periodic assessments of progress.

We are in this regard in the process of streamlining the procedural rules for these courts so as to promote efficiency and shorten the time for concluding cases brought before them while ensuring that due process is not compromised.

Now, more than ever, we need to accelerate the successes of these courts as a model of the efficiency of our specialised courts going forward, moving beyond the foundations that have been established. I am confident that for the future, these

courts will enhance accountability in the stewardship of public resources by those we entrust with this responsibility and will stem impunity.

As you may be aware the courts of first instance in respect of most of these crimes are the Subordinate Courts. In the interest of speed and administrative convenience, some Magistrates were identified to handle economic and financial crimes on a fast track basis within the existing legal framework made up mainly of the Constitution, the Subordinate Courts Act, the Criminal Procedure Code Act and the Penal Code Act.

Article 120(3)(c) of the Constitution envisions the creation of divisions at the subordinate court level. Rather than continue to have economic and financial crimes courts continue to operate administratively we have made proposals for amendment to the Subordinate Courts Act to create separate divisions of the Subordinate Courts to deal with specific kinds of crimes such as gender-based violence, breach of local government by-laws traffic offences and economic and financial crimes, all of which are currently handled on a fast track basis by administrative arrangements only.

Creation of these divisions will give us the flexibility to make specific rules applicable to these divisions within the broader framework of the Criminal Procedure Code Act.

I have no doubt in my mind that as far as economic and financial crimes courts are concerned, we in the Judiciary are on a positive and sustainable path into the future. Even whilst we grapple with the continuing financial and infrastructure woes and challenges.

I have boundless confidence that in reifying the goodwill which this Government has shown thus far to deal with the challenges in the justice dispensation, it will expedite its consideration of the options available to most suitably address the issue of infrastructure deficits and other logistical challenges that so gravely afflicts the Judiciary today.

It is also the desire of the leadership in the Judiciary to identify some Magistrates in Subordinate Courts to join their senior colleague judges in the Economic and Financial Crimes Division of the High Court to progressively specialise in economic and financial crimes. This will invariably boost their efficient handling and timely conclusion of such matters

Conclusion

The economic and financial crimes courts are a necessary judicial forum for allowing persons suspected of involvement in economic and financial crimes to account for their allegedly criminal conduct. Although the first one and half years of operations have been somewhat difficult, it is clear that the court is improving its efficiency and is picking up pace in concluding matters brought before it.

We should all manifest an unwavering commitment to see these courts succeed. After all, the success of these courts is for the greater good of the Zambian people. This consideration alone, if nothing else, should continue to be the motivating force for our collective efforts as we grapple with the present order of challenge and opportunity for these courts.