

Sch of Law.

THE LOCAL COURTS AND THE JUSTICE DELIVERY IDEAL
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**THE UNIVERSITY OF Zambia
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THE LOCAL COURTS AND THE JUSTICE DELIVERY IDEAL.

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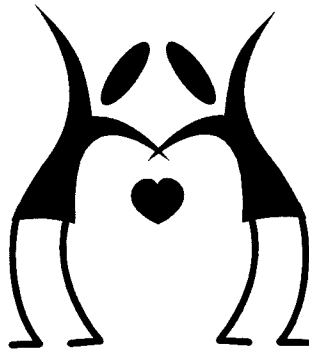
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DEDICATION...

To a couple whose names should be emblazoned in *GOLD*:
My lifeline, always by my side, my encouragement...
The channel through which my very existence came into
being,

Mr. Peter, L. M. Zulu and Mrs. Caroline, E. Zulu,
May I be to you even a fraction of the blessing you have been to me.
May the almighty God continue to richly bless you.

Amen.



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To my heart, my friend Precious, you' ve grown with me and you understand me, there is not enough space here for me to say it all, but thanks for all you are to me, you are and will always be special to me.

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For all those I left out (is it possible?), it its only because I believe I have already prepared the biggest acknowledgement known to this type of essay! Forgive me I still thank you too; you know that!

University of Zambia

Grace Zulu.

TABLE OF CONTENTS

ITEM	PAGE
1. Title Page	i
2. Dedication	ii
3. Acknowledgements	iii
4. Table of Contents	iv
CHAPTER ONE	
INTRODUCTION	1
CHAPTER TWO	
2. THE JUSTICE DELIVERY SYSTEM	3
2.1 What is the Court?	4
2.2 Procedure in the Court	4
2.2.1 Criminal Procedure	4
2.2.2 Civil Procedure	6
2.3 The Judge in Justice Delivery	9
2.4 Justice as a General Concept	15
CHAPTER 3	
3. THE LOCAL COURTS Act- A CRITIQUE	19
3.1 The Preamble	19

3.2 Main Provisions	20
3.2.1 Part I	20
3.2.2 Part II	21
3.2.3 Part III	24
3.2.4 Part IV	27
3.2.5 Part V	27
3.2.6 Part VI	27
CHAPTER 4	
4. THE JUSTICE DICHOTOMY	31
4.1 The Dual Legal System	31
4.2 The Supremacy of The Zambian Constitution	36
4.3 The Rule of Law	37
4.4 The Separation of Powers	40
CHAPTER 5	
5. ANALYSIS, CONCLUSION, RECOMMENDATIONS	42
5.1 Analysis (the local court reality)	42
5.1.1 Operational Constraints	42
5.1.2 Quality of Work	45
5.2 Conclusion	48
5.3 Recommendations	49
6. Bibliography	52

CHAPTER ONE

INTRODUCTION

The Lusaka High Court of Zambia proudly shows off a monument, whose presence has by now become a common feature to the city dwellers. This monument is the statue of a Zambian woman whose outstretched hands are at ninety degrees to her stately body. Firmly brandished in either hand are two peculiar objects, a weighing scale and a sword. The thesaurus suggests the word 'weapon' as a synonym to the word sword, and the word balance for the weighing scale. The unknowing mind would ask why this monument is showing off these particular objects and how they are related to each other. Wisdom would probably come in and suggest that the explanation is of symbolic significance, this would be correct. Justice has long been referred to as the sword, cutting out or fighting (as a weapon) off 'in-justice and protecting the weak. The scale, on the other hand, refers to balance, whose synonyms are poise (dignity) and stability. The scale has two opposing sides which must be balanced, stabilized, dignified, and just as a written text states on it's cover, the nature of it's contents, so too does the court proclaim through it's monument that it seeks to fight off injustice, protect the weak, through equity and through a stable, balanced and dignified system. This is the expectation of the Justice delivery system, a system in which the Local Courts are an inherent Part.

The recent outcry has been that the local court does not practice these ideals. Litigants are not given the dignity the court promises. This essay seeks to compare the Local courts as they stand today with the ideals of the Justice Delivery system and give an opinion on whether they meet the requirements of this ideal or not.

Reference has been made to other bodies that conducted similar research and their views have made a part of the research material and analysis. Recommendations made by these bodies alongside the recommendations of this essay have also been given.

The value of justice delivery goes to the root of the sanity of society itself, and therefore the issue raised in this essay must not be taken lightly at all...neither must the court that delivers it...

CHAPTER 2

2. THE JUSTICE DELIVERY SYSTEM- THE IDEAL CONCEPT

The judiciary has sometimes been referred to as the justice delivery system¹. Why is it referred to as this? What do they mean when they call it justice? And how is the judiciary expected to deliver this justice?

The word justice has various meanings. One may speak of having a 'just cause' to qualify ones intentions, then again ones actions may be called 'just' where in the administration of his action one says 'justice has been done'. In reference to the courts, how is the word justice used?

Otto. A. Bird² specifically refers to justice in its application in the administration of the law. He states;

"We apply it to the administration of the law, when we speak of 'courts of justice', as well as to its administrators, 'supreme court justice', or 'justice of peace'".

From this one may derive the fact that justice is expected to be distributed as a part of the administration of the law by the courts. "Courts of justice" implying that the courts are expected to be 'just' in their administration of the law. How are they expected to achieve this?

¹ Zambia Law Development Commission (ZLDC)-Objectives of Review of the Local Courts, Mongu Workshop Report

² Otto, A Bird .The Idea of Justice (1967). Fredrick A Preager, publishers New York. Pg. 4

To closely examine this, this chapter will go to length in explaining the use of justice in court proceedings and judicial power.

2.1 WHAT IS THE COURT?

The court, its definition derived from the Latin word 'curia', has various significations. Of relevance here are its uses to signify the place where justice is periodically administered and also its use in the reference to the judges who sit to administer this justice³.

This means that, to satisfy this meaning the institution must be able to provide and apply justice judicially and the judiciary or 'Justice Delivery System' is established to perform these very functions. Through an established system of procedure and practice, justice is expected to be administered in these courts.

1.2 PROCEDURE IN THE COURT

This is, divided into civil and criminal procedure.

1.2.1 CRIMINAL PROCEDURE

Criminal procedure is laid out in Zambian statute and it is basically self-explanatory. The aim of the court is to establish beyond reasonable doubt, that the allegations placed on the accused prove he is guilty beyond reasonable doubt. Within the proceedings, the judge will seek to administer justice that will

³ John B Saunders, ESQ. Mozleys and Whitteys Law Dictionary (1970). Butterworths. London

impact society as a whole, and to the litigants before him. For as it is said, that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done⁴.

It is imperative that the accused is established against him, a case beyond reasonable doubt, worth punishing or be established that he committed the offence at all. This is not an easy task, as it is the show of evidence that determines (in Zambia through practicing the adversarial system) the 'reasonable doubt'. For as J W Ehrlich⁵ states;

*"an innocent man may be sent to penitentiary
by an honest but thoroughly biased witness."*

Therefore, those responsible (in this case justices) are charged with the need to consider a number of things. Hilary Allen points out the need to combine humanity and compassion with a clean recognition that sentencing is an integral part of criminal justice. He later points out⁶ that decision on sentence cannot hinge exclusively on the well being of the offender. It is in this vein that criminal justice is to be viewed also as a means of securing a standard of social behavior. This, justices and all involved in criminal procedure must also bear in mind. As William S Chambliss⁷ considered;

⁴ Judge Silungwe in *Mwenya (Moses) v The People* (1973) ZR 261

⁵ J. W. Ehrlich. *A Reasonable Doubt*. (1965). Award Books New York pg. 18

⁶ Hilary Allen. *Justice Unbalanced*. (1987) Open University Press. Milton Keynes. Philadelphia. Pg. 88

⁷ William Chambliss. *Crime and the Legal Process*. (1969) Mc Graw-Hill Book Company. New York pg. 2

"Nations have increasingly turned to the legal system in an effort to bring order out of chaos or to maintain stability in the face of dramatic changes in the fabric of society"

2.2.2 CIVIL PROCEDURE

The main aims of civil procedure are primarily to ascertain the truth in the matter before it. Not only to the truth desirable, but so too is the realization of the law. It is then imperative that the procedure involved must command all the means necessary to ascertain this truth,⁸ here in lays justiciability. The concept of justiciability demands three basic things⁹;

1. That the dispute must be of a legal nature
2. The interests of the litigants must be shown, the complainant must be able to show that he is injuriously affected.
3. There must be availability of remedy, that is, the matter must be appropriate for judicial decision.

Added to this is that the philosophy of legal procedure involves the fact that everyone must be given opportunity, though with reservations and under regulations, of appealing to the judge, thus producing the legal relation calling for procedure¹⁰.

⁸ Benjamin Condozo pg 257

⁹ B O Nwanbweze. Judiciary in commonwealth Africa. (1981). C Hurst & company. London.

¹⁰ Op cit pg. 258

The underlying principle in this case is carefully explained by Cardozo¹¹ who states;

"..this procedure, to be sure, is only supposed to realize the right that the complainant wishes to have realized ... it only means that the judge is bound by the limits of that particular right, the realization of which the complainant desires.."

the realization of this right and thus the legally determinative disposition of the defendant would create a new legal position or basis between the parties and settle the dispute. Justice would then be said to be done. It must be noted of course, that is not always that this deposition takes place, as sometimes the complainant may seek a non-existent right, the determination of the judge would bring this to light instead.

Natural justice too demands as was stated by the Lord Shaw in the case of Local Government Board v Arlidge¹², that a result or process should be just. This concept imports three major ideals;

1. That no one shall be a judge in his own cause

¹¹ *ibid* pg. 257

¹² (1915) A.C. 120 at page 138

2. That every individual has the right to be heard
3. That every individual has the right to hear the allegations against him

It has been seen as useful to note that procedure may also be seen to be a tool for the enhancement of justice also in the form it takes. There are two recognized procedures used in legal jurisdictions worldwide, these are the 'Adversarial' procedure and the inquisitorial procedure (Parntei-und untersuchungs-prozess).

The adversarial (or party) procedure is an intellectual conflict of two opposing persons and in their contest they bring forward their reasons and resources. The inquisitorial procedure allows the judge alone to determine the matter, and others involved are solely participants who can take part in one way or the other, but cannot oppose each other nor control the course of procedure. This essay will not go into details on these procedures as they have little bearing on its aims.

The administration of justice requires application and provision of justice and the justice delivery system is a system that is out to do just this. Though procedural and substantive legal provisions, it sets about its duty in administering justice. It has also been advanced by presiding jurists that the character of the judge may also influence decision-making and how justice is delivered.

2.3 THE JUDGE IN JUSTICE DELIVERY

This authority has several functions in his office. Even though he is primarily an independent party who sits in court to determine matters of conflict, he is seen as many things. Cardozo¹³ states;

"The judge is the interpreter for the community of its sense of law and order must supply omissions, correct uncertainties and harmonize results with justice through a method of free decision- 'libre recherche scientifique'

The requirement of free decision is highly important because impartiality is a major requirement in the courts delivery of justice. So important is it, that Condozo¹⁴ states that any impairment of his free examination is entirely inadmissible and also unworthy of judicial office. R W Dias further states¹⁵;

"if people are required to settle their disputes by peaceful process rather than by resorting to self help, such process should dispense what they feel is justice in the situation complained of as being unjust. In order to do this, it is essential to foster confidence in its impartiality and in the judges who administer it.."

¹³ Benjamin N. Cardozo. The Nature of the Judicial Process (1963). Yale University Press. New Haven, Connecticut pg. 16

¹⁴ ibid pg. 257

¹⁵ R W M Dias. Jurisprudence. 3rd ed. (1970) Butterworths. London, pg 47

This he refers to as the moral principle of justice. In arriving at a decision, a judge will use both law and reasoning. The law, the judge will find in available statutes or the constitution or through an established rule in common law. Where this is the requirement and where the rule found fits the case, he will usually have to look no further.

"The correspondence ascertained, his duty is to obey"¹⁶

Lord Denning adds¹⁷;

'We do not seek, as continental jurists do, to lay down principles first by abstract reasoning and then apply them to concrete cases. We decide cases according to their merits and then see what principle emerges from them.'

Adherence to principles in law is a principle factor, as it feeds the requirement of consistency as foundation for the administration of justice. A system has been set through the common law that establishes consistency. Two doctrines emerge in this consideration. That of precedents and that of 'stare decision'.

Precedent, as according to R W N Dias¹⁸ in its broad meaning is in the sense of past decisions which are used as guides in the moulding of future decisions, a principle, he argues that is not only peculiar to common law jurisdictions but also to all developed systems of law. He further states:-

¹⁶ op cit pg. 14

¹⁷ Chic fashions (West Wales) ltd. v Jones (1968) 2 QB. 299 at page 313

¹⁸ Op. cit pg. 45

"..precedents in certain circumstances have the quality of being 'laws' in themselves and are also binding and which means they have to be followed or else distinguished

"Rupert Cross¹⁹ gives three basic rules of precedents,

These are:-

1. All courts must consider the relevant case law
2. Lower courts must follow the decisions of courts above them in the hierarchy.
3. Appellate courts are generally bound by their own decisions.

The doctrine of 'stare decisis' derived from 'stare decisis *et non quieta movere*' as distinguished from the doctrine of 'precedents' is much narrower. This doctrine operates according to the rule of law involved. R W N Dias²⁰ highlights two conditions, which have to be satisfied before the doctrine of 'stare decisis' could be established. The first, is that there has to exist reliable reports of cases, adding that it is obvious that if cases are to be authoritative as 'law' there should be precise records of what they lay down. The record is that there should be a settled judicial hierarchy before there could be any clean-cut doctrine of binding authority, for it to be known whose decisions bind whom. It is obvious from these exerts that store decisis deals with the 'bindingness' of judicial decisions

¹⁹ R W N Dias Jurisprudence 3rd ed (1970) Butterworths. London pg. 49

²⁰ P M S Hacker, J. Raz ed.. Law Morarity and Society. "Rules precedent by Rupert Cross" (1977) Clarendon Press Oxford.

and it has been established that generally higher courts bind lower courts but never vice versa.

These two doctrines ensure consistency and predictability. Litigants are made confident of their expectations of the court and can therefore rely on it. In the words of Cardozo²¹,

"Adherence ...must then be a rule rather than an exception if litigants are to have faith in the even handed administration of justice in the courts".

Therefore, a lower court will be under a duty to adhere to the two doctrines and the in the case of Zambia, a system of hierarchy is already established. The Supreme Court is the highest of the courts, established by the constitution²² as part of the judiciary. This is the final court of appeal; no trial may be commenced in this court except for a presidential petition, which may be commenced in it as a court of first instance. All its decisions are binding on all lower courts. Immediately subsidiary to this court is the high court, which is a court of appeal from lower courts. All its decisions are binding on lower courts, but not on the Supreme Court. It is the court of first instance only in selected areas. Immediately lower than this court is the subordinate court (or magistrate court), which hears appeals from the lowest court recognized under the judiciary, the

²¹ Benjamin N. Cardozo. *The Nature of the Judicial Process* (1968) Yale University Press, New York Haven Connecticut. Pg. 34

²² The Constitution of Zambia, Cap 1 of the laws of Zambia. Article 91

local court. Just as a system of hierarchy is established, so is the bindingness of decisions trickling down the membranes of these courts from the Supreme Court right down to the local court. The local court is therefore, bounded by the magistrate court, the high court and the Supreme Court whose records must be followed.

This is where the judge will find the law, which he embodies in his judgment, but as earlier, referred to, his law has to be accompanied by reasoning. Judges like other human beings are affected by the communities they live in and by customs, practices, traditions, experiences and beliefs. These things form a part of their character and inevitably affect or influence their reasoning. Condozo²³ comments on this by stating:-

"there is in each of us a stream of tendency..... which gives coherence and direction to thought and action. Judges can not escape that current any more than other mortals the resultant is an outlook on life , a conception of social needs .. which when reasons are nicely balanced must determine where choice shall fall. In this mental background every problem finds it's setting".

²³ op. cit. pg. 12

When put this way, it may sound like and indeed it is, an enormous amount of power placed in the hands of justices and with the above proposition it may in fact leave room for abuse. However, the above named jurist qualifies this by stating that in the long run, there is no guarantee of justice, except the personality of the judge and that we are not to flinch from granting it for this very reason²⁴.

In reasoning the jurist directs that the judge, very likely, takes consideration of a number of things, his analysis is wide. He categorizes these into what he refers to as 'directive forces'. These may be in the line of logical progression which he names the 'rule of analogy', or the 'methods of philosophy'; the line of historical development; this he calls the 'method of evaluation', the line of customs of the community, which he calls the 'method of tradition' and along the lines of justice, morals and social welfare, the 'mores' of the day, and he calls this the 'method of sociology'.

Having examined the above, the importance of the judge, his role in the court and his judicial decisions cannot be over emphasized. There is however, one other function that his judicial decision performs that has not yet been placed forward. This is its function of 'Res judicata'.

²⁴ op. cit. pg.

This doctrine lies in its existence to dispose of controversy before the court through demanding that a case cannot be re-opened in an court when decision was reached by a court of competent jurisdiction.

In support to this is, a statement by B O Nwabueze²⁵ on the attributes necessary to the judicial process where he states:-

"Judicial power necessarily implies a power to give a binding decision or determination. Accordingly, if proceedings, whatever their nature and whatever the tribunal conducting them, do not result in a decision or determination the function is not judicial"

Therefore, the sentence of today will determine the right and wrong of tomorrow and if the judge is to pronounce it wisely, he must make use of some principles of selection that will guide his decisions²⁶, and impartiality, consistency, predictability coupled with reasoning will enhance the administration of justice.

2.4 JUSTICE AS A GENERAL CONCEPT

Justice as a general concept has been seen as necessary because it is a concept that a court justice inevitably must be aware of if he is to distribute it. This concept in this particular analysis is introduced as a general concept that judges

²⁵ B O Nwabueze. *Judicialism in commonwealth Africa*, (1981). C Hurst & Company

²⁶ Benjamin N Cardozo Pg. 21

will apply, though in most cases subconsciously, to every matter addressed before them.

Justice generally imports a number of concepts that will briefly be referred to with the guidance of named jurists.

Equity: - Alf Ross states;

"... the demand for equality contained in the idea of justice is not directed absolutely at each and all, but at all members within a class as determined by a certain relevant criteria".

This therefore, falls squarely within the theory of Aristotle, an ancient jurist who perpetrated the theory of 'distributive justice'. He argued that equality meant the treatment of equals equally and of un equals unequally. Therefore, the demand for equality was only in the requirement that no-one, either arbitrarily or without sufficient reason shall be subjected to treatment that differs from that accorded to any other person²⁷.

Equity as a concept has its origin in the reign of Edward II in English history. It was found at that time, that there were efficiencies in common law courts. The justice delivered was seen as rigid as redress was limited. The court of Chancery was then established and its judgments conflicted with those of the common law

²⁷ *ibid.* pg. 269

courts. It enforced rights in matters where there was no relief at common law, matters such as married women settled property, equities of redemption or relief against forfeitures and against penalties²⁸. At this time the courts acted separately as it was only until the establishment of the Judicative Act. 1873 and 1875 that the two were fused and administered in one court. Now the ordinary courts of law administer both forms of justice and section 25 of the judicative act of 1875 states that where the two are in conflict, equity prevails.

Equity became increasingly recognized as a concept embodying 'conscience', "reason" and 'good faith' as concepts guiding judgment²⁹. It is often in fact referred to as 'the shield' and justice as 'the sword'.

In current law, it is embodied in ideas of a 'just regulation of the mutual rights and duties of men living in a civilized society'³⁰. The concept has progressed to a point where, as above, equity is a universal concept used based on subconscious factors relating to the minimum standard of mutual respect and dignity. Therefore, the term 'equity' is not recognized as a 'western' concept, but as a universal one.

This chapter has analyzed the general principles incidental to the delivery of justice in the justice delivery system. Those outlined do not state a 'hard and fast' rule on the expectation of justice delivery but instead lay down the general

²⁸ Halsbury's laws of England, 3rd ed. Volume 14. pg. 462-463

²⁹ Ibid pg. 464

³⁰ Ibid

expectations as set out by several authoritative jurists. Through this, it is hoped that this chapter has succeeded in compiling a basic standard of requirement, which will now form the basis of comparison to the practice in reality in Zambia today.

TABLE OF CONTENTS

ITEM	PAGE
1. Title Page	i
2. Dedication	ii
3. Acknowledgements	iii
4. Table of Contents	iv
CHAPTER ONE	
INTRODUCTION	1
CHAPTER TWO	
2. THE JUSTICE DELIVERY SYSTEM	3
2.1 What is the Court?	4
2.2 Procedure in the Court	4
2.2.1 Criminal Procedure	4
2.2.2 Civil Procedure	6
2.3 The Judge in Justice Delivery	9
2.4 Justice as a General Concept	15
CHAPTER 3	
3. THE LOCAL COURTS Act- A CRITIQUE	19
3.1 The Preamble	19

CHAPTER 3

3. THE LOCAL COURTS ACT- A CRITIQUE

In Chapter 1, the essay sought to establish due general principles governing the administration or delivery of justice in a Justice Delivery System. This Chapter now seeks to draw towards the core of the essays objective. It analyses the requirements of the Local Courts Act, Cap 29 of the Laws of Zambia, which establishes the institution of the Local Court. The Local court, has been specifically selected as a study in order to make comparisons between the justice it delivers and the justice that it is required to deliver, thus establish what quality the justice delivered is.

What then are the provisions of this Act?

2.1 THE PREAMBLE

The Act was established in 1966. Its preamble, dated 1st October 1966 states³¹ that it was established to provide for the recognition and establishment of local courts, previously known as native courts, to amend and consolidate the law relating to the jurisdiction of and procedure to be adopted by local Courts; and to provide for matters incidental thereto.

³¹ Local Courts Act, Chapter 29 of the Laws of Zambia, p.5.

This provision obviously states the intentions behind the establishment of the Act. Of particular interest here is the provision stating that it will be their function to 'amend' and 'consolidate' the law. This requirement falls squarely within the ambit of the expectations of judicial decisions (See Chapter 1) under the ideal of a Justice Delivery System.

3.2 MAIN PROVISIONS

The Act is carefully divided into seven parts.

3.2.1 PART I

To begin this part is a short title citing the court as the Local Court. It is followed by general interpretations of words and phrases embodied in the Act.

Of relevance, and importance here as Section 3 which deals with the appointment of officers. It states here that the Judicial Service Commission may appoint a Local Courts 'Adviser' yet the general interpretations give no definition of who this adviser may be nor what his functions are.

Subject to this Act, the Judicial Service Commission are also given the mandate to appoint such number of Local Courts Officers as it may consider necessary for purposes of the Act. It further states that the aforementioned appointed officers

and the Advisor shall exercise such powers and perform such duties as the act provides³² (found in section 6).

3.2.2 PART II - Provides for the recognition of Local Courts.

Section 4 grants the Minister (in this case of Home Affairs) the power to recognise' or establish under his own hand, such local courts as he shall think fit, by a court warrant. This court so established shall exercise only the powers conferred on it by the Act itself.³³

A copy of this warrant certified under the hand of the Registrar of the High Court is deemed as conclusive evidence of the existence and contents of the warrant.³⁴ The Minister is granted further powers to suspend or cancel any court warrant and issue a new court warrant, upon cancellation of the old, in respect of the Local Court concerned.

Section 5 concerns itself with the grading of the courts. This establishes a hierarchy, stating only that;

"shall be of such different grades as may be prescribed"

³² Ibid Section 3(2).

³³ Ibid Section 4(1).

³⁴ Ibid Section 4(2).

The pursuant to this provision, there have been two grades of courts established, Grades A, and B. In grade A there are the two types of courts, the urban courts and the Non-Urban courts, and under Grade B, there are only grade B courts, resulting in a total of 3 types of local courts.

Subject to Section 5(1) (1), the Local Courts are precluded from determining civil claims other than matrimonial or inheritance claims valued in money. Or to deal with cases or impose fines higher than a certain number of penal units. They may not order probation or imprisonment for a period exceeding two years or order corporal punishment in excess of twelve strokes of the cane.

The penal unit has been set at a value of K180. This means that the limit set for matrimonial claims is K21, 600. And fines not exceeding 40 penal units – this totaling up to K7200. In the current economy those figures are unrealistic and for all intents and purposes bear the threat of rendering the local courts without mandate as most deterrent fines at the current value placed in the Ac are not deterrent at all. These provisions are outdated because they fail to meet the current economic values.

The Act still provides for corporal punishment. This isolates Article 15 of the constitution, which prohibits any forms of torture. It is also contrary to the

ruling³⁵ by Justice Muzyamba in the case of *The People v Davies Mumeno* in which it was held that the strokes of the cane were to be banned as a form of punishment as it is inhuman and degrading treatment contrary to Article 15 of the constitution. Therefore, this provision too, is outdated and unnecessary.

Section 6 provides for the constitution of the courts and for the appointment of the members.

6(1) states that the court shall consist of a presiding judge wither sitting alone or with such number of other members as may be prescribed – by the minister in the court warrant.

It fails, however, to provide for the specific circumstances under which the determination of the number of members will based. This leaves an open-ended arena for consideration and is likely to lead to inconsistency.

The section grants a service tenure of 3 years after which justices may be eligible for re-appointment by the Judicial Service Commission.

This poses a question on the independence of these justices. The power of the Commission to re-appoint very likely instills a sense of insecurity in the justice because they are under a duty to conform to an unspecified and unlimited standard. In the face of abuse of this power granted to the members of the

³⁵ *The People v. Davies Mumeno* (1990 – 1992) ZR 13.

Commission, justices may be forced into the impairment of their free decision – a great threat to the requirements of justice delivery. This provision is not fitting of officers in judicial office, and should therefore not remain in the statute.

3.2.3 Part III

Part III deals with the jurisdiction of the courts.

Section 8 specifically deals with civil jurisdiction, stating that the court shall have the jurisdiction to try any civil cause or matter in which the defendant is ordinarily resident within the area of jurisdiction, of such court or in which cause of action has arisen within such area, the latter also applies to civil proceedings in real property.

The requirement of the defendant being ordinarily resident within the territory of the court brings a number of questions to the fore. Civil claims include issues such as marriage dispute settlement and these courts established in rural areas have the mandate of dealing both customary law marriage³⁶. With the steady growth of the intermarriage, how are these justices expected to cope? Where the defendant is from another jurisdiction is the second factor used in order to settle the matter? If so, does the fact that the dispute, being the cause of action, has arisen in his area make him competent to settle a matter involving

³⁶ Jurisdiction to deal with issues of African Customary law is pursuant to Section 12.

another custom? Should this not, what cost would be involved in his calling for the appropriate³⁷ assessors, and who incurs this cost? Or does he then resort to allowing the transporting of the parties to the next jurisdiction.³⁸ How does the court deliver justice amidst these conflicts?

The Act itself does nothing to cater for these problems, and it is only understandable when the reality of the fact that it was established in October of 1966 and has received little amendment to its original form. At the time of its establishment mobility was not as diverse as it is today, with roads now reaching the far-reaching areas in the country, mixed customs, intermarriages were not a serious form of consideration. Today, this is not the case, and the Act falls poorly short of the provision of procedures and guidelines meeting this problem. the court is permitted a limited criminal jurisdiction under Section 9, subject to a number of limits including the fact that it is precluded from trying any matter involving death.³⁹

It is granted the jurisdiction to trying matters subject to the Local Government Act.⁴⁰

³⁷ Section 61 deals with assessors.

³⁸ Pursuant to Section 53 dealing with transfer of cases.

³⁹ Ibid Section 11.

⁴⁰ Ibid Section 10.

Section 12 introduces the Repugnancy Clause, stating that African Customary Law is applicable so far as it is not repugnant to natural justice or morality or incompatible with the provisions of any written law.

This clause brings out two issues, the first is the issue of repugnancy itself, and the second is the Rule of law. Both these issues and their impact on the court, and their involvement in the delivery of justice in this court will be discussed in farther in the essay.

It should be noted, that the jurisdiction to try matters in African Customary law is the only arena through which a local Court justice is permitted similar offences to those found in the Penal Code, but this must be done in such a way that the maximum punishment must not exceed that set in the penal code.⁴¹

The court does not have the jurisdiction to try matters in just any written law in Zambia, the Act grants powers to the minister to confer upon all or any local courts jurisdiction to administer statutes purely of his choice.⁴² This rather shocking provision gives no guidelines as to his choice in statute! The power granted is questionable, surely a judicial office is better suited to decide – as would for example, the Judicial Service Commission, in aid of the Minister as opposed to the Minister alone.

⁴¹ Section 12(2), Local Courts Act, Cap 29.

⁴² Ibid Section 13.

3.2.4 PART IV

PART IV, which deals with procedure, prohibits legal practitioners acting other than solely in their own behalf from practicing in this court.⁴³ Procedure is as set out by the Chief Justice under Section 68. Sections 15 to 46 deal with various procedural issues such as those relating commencing of action before the court, procedures in certain matters etc.

3.2.5 PART V

Part V deals with offences relating to the administration of justice. It deals with issues such as contempt of court.⁴⁴ Corrupt influence; corrupt practice and adjudication without authority, which relates to persons who falsely hold themselves out to be local court justices.

3.2.6 PART VI

Part VI refers to the transfer of cases and deals also with appeals and revisions of judgments. With regards revision of judgments, the Chief Justice⁴⁵ is awarded the authority to appoint an authorized officer who shall have the duty of inspection and revision of local court records within the area of his jurisdiction. This inspection is extended to records of proceedings and such other evidence as he may deem necessary to satisfying himself as to the correctness, legality and propriety of any judgment, order, decision or sentence recorded, made or imposed by such court or as to the regularity of such proceedings.

⁴³ Ibid Section 15.

⁴⁴ Ibid section 47.

⁴⁵ Ibid section 48.

He is further authorized to hear the submissions of parties as and when he deems fit subject to the limitation that such will not cause undue delay.⁴⁶ The main purpose of this is to allow a form of review of judgment to ensure its conformity with the requirements of a certain standard of justice.

The authorised officer, who may be a local court officer or a magistrate whose mandate to is situate in the jurisdiction of the local court,⁴⁷ is then accorded the power to revise the judgment, order or decision of such a local court. This is subject to the requirement that no appeal in respect of the same judgment has been validly entered, or no application for leave to appeal no pending nor any appeal, if entered, has been withdrawn by reversing, amending or varying in any manner such judgment, order or decision.⁴⁸

In the case of a local court authorised officer, the Act prohibits, by section 54 (3) (b) (iii), the officers from exercising powers revision under the Act in matters where he has already sat in an advisory capacity.

In criminal matters, the authorised officer may vary sentence where he feels it is too severe. He may also order retrial in certain cases.⁴⁹

⁴⁶ Local Courts Act, Cap 29, Section 54(1).

⁴⁷ Ibid Section 54(2).

⁴⁸ Ibid Section 53(5(a)).

⁴⁹ Ibid Section 54(3(a)).

Section 55 confers the duties of an authorized officer onto the Director of Local Courts as well.

The powers given in this case are enormous; and although revision of judgment may be argued to be necessary, there is a window of opportunity for abuse when power of this proportion is put in the hands of a single officer.

The Act offers no guidelines as to what might possibly constitute irregularly or inconsistency to the extent to which it may call for the revision by an authorized officer. This sets no limit and stands as highly dangerous. Appeals are to the Subordinate courts.⁵⁰

Part VII deals with general provisions that are an addition to procedural issues arising before the court.

This chapter has analyzed the Local Courts Act, the statute establishing the institution of the Local Courts. It has brought out several shortcomings of the Act and how these may be causes of the compromise in the administration of, and delivery of, justice by the court. The provisions of the Act, however, do not solely provide and constitute what is involved in the delivery of justice in the

⁵⁰ Section 56.

practice of these courts today. The next chapter will outline the other aspects involved in the Administration of justice in Zambian courts. These will relate to substantial issues such as provisions of other written law, common law principles affecting the court and customary law.

CHAPTER 4

THE JUSTICE DICHOTOMY

4.1 THE DUAL LEGAL SYSTEM

The history of Zambia shows that she is the product of colonial rule like other African states are today. Foreign rule extends as far back as the nineteenth century, when, in 1890 the British South Africa Company (B.S.A) headed by John Cecil Rhodes established Zambia, then Northern Rhodesia, as a British Territory.⁵¹ Soon after this in 1924 the British colonial office took over direct control, and from 1924 it was they that ruled until 1964 when Zambia attained her independence.

Before the coming of the British settlers, Zambian people practiced a form of law, which was indigenous, and unwritten; this is referred to as customary. This customary law continued to exist despite the colonial experience which brought with it law passed by the British Crown. This legislation known as Foreign Jurisdiction Acts acquired a status of superiority to the local laws, essential to enable the free control of the British over the natives. These Acts made no qualms about stating that they held, exercised and enjoyed any power from the crown, the crown having acquired this power by the conquest⁵² or

⁵¹ Legality Journal 2002. The University of Zambia Law Association. "How Zambia Acquired Dual Legal System, by Lillian Mushota 2002 at page 25.

⁵² This conquest was pursuant to the 'Scramble for Africa' a period in which the Berlin Act 1885 was established

cessation of territory.⁵³ Another introduction was that of common law, the unwritten law of England.

These foreign laws, did, however acknowledge the existence of the African law. It provided that⁵⁴ careful regard would always be had to the customs and laws of the class, or tribe or nation to which the parties respectively belonged. To administer this law, Courts were created, and so began the existence of English law in Zambia.

At independence, Zambia, through the English Law (Extent of Application) Act, Cap 11 of the Laws of Zambia extended the Application of certain selected statutes (those in force in before 17 August 1911) the common law and doctrine of equity to the new republic.⁵⁵

The British Acts of Zambia, Chapter 10 of the Laws of Zambia, Section 2 states;

"The Acts of Parliament of the United Kingdom set forth in the schedule shall be deemed to be of full force and effect in Zambia."

⁵³ Op.cit a quotation from Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965, Oxford University Press 1966 at pg. 55

⁵⁴ B.S.A Company Charter, Article 14

⁵⁵ Section 2

It goes on to name the statutes to which it refers. In light of this entire arrangement, one would then ask what the status of the customary law is today.

The written law as it stands, recognizes customary law⁵⁶ and gives the courts the jurisdiction to administer it. Matters dealing in customary law begin in the local court.⁵⁷

On appeal from the Local Court matters move to the Subordinate, then to the High Court on further appeal and finally to the Supreme Court on final appeal.

This recognition is, however, subject to condition. The Local Courts Act, Cap 29 of the Laws of Zambia,⁵⁸ The Subordinate Courts Act, Cap 28 of the Laws of Zambia⁵⁹ and other statutes given the mandate of acknowledging the customary contain, alongside this recognition, a clause commonly referred to as a 'repugnancy' clause. This clause has the effect of making the customary law subject to the scrutiny of other existing principles of law. The customary law is recognized as applicable only if it is not repugnant to or incompatible with any written law, or with natural justice, equity, good conscience or morality.

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⁵⁷ Mwiya V Mwiya (1977) Z.R. 113 (H. C.)

⁵⁸ Section 12

⁵⁹ Section 16

This clause may be of benefit because the changing Zambian values may not accept some of the old customary practices, and it enables the flushing out of extreme practices, however, it may also be a disadvantage. In the case of *Rosemary Chibwe Vs Austin Chibwe*,⁶⁰ such an example was brought forward. The matter is before the Court involved a divorce settlement under customary law. The matter began in the Local Court. The grounds for the divorce were alleging, *inter alia*, unreasonable behavior and adultery. The couple had five children and the Local Court granted the prayer. The appellant appealed to the Magistrates Court on the grounds that the issue of maintenance and property settlement had not been properly addressed. The appeal was dismissed. On appeal to the High Court it was ruled that the respondent pay a lump sum with interest at the rate 10%. On appeal it was the appellant's contention that the lump sum awarded did not suffice. Chibesa Kunda J.S. observed in her dicta that there was a dichotomy. She observed that this dichotomy was resulting from the application of an unrecorded customary law, against the background of the changed environment of macro economic issues with its ramifications, the growth of the common law of Zambia, the changes in social values influenced by international values. These values were received by Zambia, through its ratification of various international instruments more or less creating two justice paradigms. Justice Chibesa Kunda further observed with concern how the existence of the two justice paradigms results, in some cases, in gross disparities

⁶⁰ S.C.Z No. 38 of 2000

bringing about in equality before the law contrary to Zambia's constitutional provisions.

The appeal was allowed and a lump sum assessed to meet all educational expenses of any of the five children and of the family if any of them would not have completed their education and training.

Other effects that English law has had on customary law. According to T. Olawale Elias is that it has had a modifying influence on those aspects of indigenous Customary Law, which have so far survived the British legal and cultural invasion. Examples of such practices corporate and inalienable property in the traditional set-up becoming gradually individual and alienable, the gradual breaking in the customary tie of family and lineage with the consequent narrowing in the individual's sense of obligation towards his kin.

The English Law has also had the effect of influencing customary law in its creative role of supplying the deficiencies of the traditional law usage brought about by new commercial and economic values,⁶¹ i.e the introduction of mercantile law, involving negotiable instruments, banking, insurance and such other new regulating principles.⁶²

⁶¹ T. Olawale Elias. The Nature of African Customary Law 91956) Manchester university Press, London

pg
⁶² Ibid

There are general laws and principles that the Courts are expected to adhere to. Zambia is governed by a constitution, and this is the Supreme law of the land. The principles governing law and its application emerge from this standpoint, that being, the supremacy of the constitution. This means that all laws in existence must conform to the ideals of the constitution.

Another principal embodied in Zambia's law administration is the Rule of Law which demands that there not be rule of man over man but the rule of law. The Courts are also declared independent, in a matter of speaking, by the concept of the separation of powers, and this greatly affects the independence of their judgments. These principles are the Principles of Common Law that form a part of the dichotomy; they seek to set their place next to the indigenous customary law, which is an inherent part of the legal body as it stands today.

4.2 THE SUPREMACY OF ZAMBIAN CONSTITUTION

The Zambian Constitution, though in a constant state of amendment, is the supreme law of the land and it demands that all laws are in conformity with its provisions. It also gives the President the power, to enforce its superiority by allowing the office to make amendments to any existing laws⁶³ to ensure that they conform to any amended constitution.⁶⁴

⁶³ Existing Laws are defined as meaning all law whether rule of law or Act of Parliament etc. The Constitution of Zambia Act No. 17 of 1996, Act 2

⁶⁴ Ibid Art 6

The status of the constitution puts a mandate on the Court to interpret its authority in the administration and determination of matters concerning law. There have been two contending views on how the Courts may apply the authority of the constitution.⁶⁵ The first may be referred to as "interperativism" and the second as "non-interperativism". The first indicates that judges deciding constitutional issues should confine themselves to enforcing norms that are stated or clearly implicit in the written constitution. The second indicates the contrary view that judges must not confine themselves but go beyond that set of references and enforce norms that cannot be discovered within the four corners of the documents.⁶⁶

The former is the more popular view, but the latter may be useful in a country such as Zambia where values are in a constant state of change, where the constitution is the skeleton or foundation from which other norms may be enforced.

4.3 THE RULE OF LAW

The Rule of Law is understood in the context of two concepts. There is its tradition English concept and the Supra Natural concept of the Rule of Law.

⁶⁵ John Hart Ely. *Democracy and Distrust . A Theory Judicial Review* (1980) Harvard University Press. London

⁶⁶ Ibid

The traditional concept is understood in the context of English constitutional law. The supremacy of parliament in the presence of an unwritten constitution.

The second, and the more applicable concept⁶⁷ is the Supra National Concept. This concept is pursuant to what the statute of the International Court of Justice; ARTICLE 38(i)(c) calls 'civilized nations'. This principle embodies the general principles of law recognized by these 'civilized nations', whose adherence is also to known International instruments. Effectively, in understanding the Rule of Law, it must be aligned with the requirements of the acceptance of the dignity and human rights understood by all civilized nations to constitute a basic fundamental right of all living human beings. Declaring this is the Universal Declaration of Human Rights of 1948 which declares in its Preamble that;

"It is essential, if man is not to be compelled to have

recourse, as last resort, to rebellion against tyranny

and oppression, that human rights should be

*protected by the rule of law.*⁶⁸

⁶⁷ See the dicta of Chibesa Kunda J.S in the case of Chibwe Vs Chibwe S.C.Z Judgement No. 38 of 2000, on the fact that a dual system exists because of the influence of International Instruments

⁶⁸ A.G. Guest, ed. Oxford Essays of Jurisprudence, A Collaborated Work. , Oxford University Press (1961) Pg 299.

The other convention, though in rather vague usage, is the European Convention for the Protection Human Rights and Fundamental Freedoms, 1950.⁶⁹ This concept has its importance in the fact that it aims at ensuring justice through its emphasis on an legal administrative procedure and practice that make paramount the law in the administration and determination of issues. In short, it emphasizes that man should be ruled by law and not by man, who may take advantage, and oppress his fellow man.

The general principles embodied in the rule of law include:

- (1) No man is above the law
- (2) No man shall be punished unless he has expressly breached a rule of law, i.e. it is improper to make rules to suit just one man.
- (3) There must be equality before the law every man regardless of his status must be subject to the law.
- (4) Laws must have in them principles of liberties, necessary for the promotion of personal dignity and the uplifting of the rule of law.⁷⁰
- (5) Every one is entitled to a fair and Public hearing.⁷¹

It is necessary for the Court to adhere to these principles, if it exists as a "Civilized nation". Zambian Courts adhere to the Rule of Law today, and the Constitution guarantees the rights and freedoms of all persons in Zambia. The

⁶⁹ Ibid

⁷⁰ H.W.R Wade, Administrative Law 5th Ed (1982) Oxford University Press, Oxford Pgs. 22-26

⁷¹ Op cit Pg. 253

law as it stands today is held supreme; for the constitutional requirement is that every act is forbidden except that which the constitution itself expressly permits.⁷² In relation to application of law, it becomes obvious then that the justices in these Courts must bear in mind these principles as they handle the conflicting principles under the customary law and bear the burden of ensuring that justice is done.

The establishment of the necessary administrative and procedural structure enforces the Rule of Law. This is where the concept of the separation of powers plays its hand.

4.4 THE SEPARATION OF POWERS

The concept of the separation of powers demands that in order to carry the justice guaranteed by the law there must be a separation of powers. There must be separation in the functions of government bodies, the persons in office and their offices and separation of the powers given to each. Much emphasis is placed on the independence of the judiciary. This is important because it places the judiciary in a position to exercise an independent judgment.⁷³

These concepts and principles of law form part of the dual justice paradigm that are in existence in the courts of law today. There is the

⁷² John Hart Ely. *Democracy and Distrust. A Theory of Judicial Review* (1980) Harvard University Press, London, London.

⁷³ Oxford Essays, Pg 253, Wade, Chapter VIII

customary law on the one hand, and the English principles of law, headed and authorized by the Zambian Constitution on the other. Justices equipped with knowledge of the existence of both and through equity seek to strike a balance between the two, having also adherence to the fact that one has been placed superior to the other. In the words of Justice Chibesakunda⁷⁴

"It is incumbent for all courts to uphold the constitution.

Our constitution has provided that in Zambia Courts

Must invoke both the principles of equity and law

Concurrently..."

The next chapter will discuss how far the Local Courts have gone in achieving this goal.

⁷⁴ Chibwe V Chibwe

CHAPTER 5

ANALYSIS, CONCLUSIONS, RECOMMENDATIONS

The previous chapters have gone in detail to give firstly, the demands of the justice delivery system, then into the law establishing the local court as part and the principles it is expected to embody in the administration of the law. The final step in this journey is to examine how for the court is from these set expectations and this chapter will seek to do just this. It will first address some of the operational constraints the court faces today. These constraints greatly affect its delivery of justice judgments it delivers. It must not be forgotten here also, that the Local Courts are an advantage, despite all system; some of these advantages will be outlined. Because there is an advantage to their existence, it is necessary, do not extinguish their existence, but instead to upgrade them. Institutions that researched in this field made various recommendations. This essay will add recommendations of its own.

5.1 ANALYSIS

5.1.1 OPERATIONAL CONSTRAINTS

The inter-African Network for Human Rights and Development (Afronet) ⁷⁵ and the Zambia Law Development Commission⁷⁶ identified the following operational constraints;

⁷⁵Local court study

⁷⁶ Review of the Local Court System, 2003

(1) Substandard working Environment.

The Afronet study revealed that the local courts are the busiest courts in Zambia today, handling between 30 and 50 cases a day. It further revealed that the infra structure used for its services, courtrooms, are completely run down.

"There are broken window, feeling paint, and blocked toilets or no toilets at all"⁷⁷

There are problems with furniture in the courts and in especially rural areas the court justices and messengers have no accommodation. Justices are forced to build their own houses out of their own money, and when they are transferred to other jurisdictions they are forced to build again. This affects security as the houses are of poor quality.

The court lacks stationery and equipment. Statutes necessary or their work are either unavailable or outdated.⁷⁸

The court also suffers the burden of financial, transport constraints, and staffing is also poor as because justices and clerks are few it delays cases

⁷⁷ op. cit

⁷⁸ Afronet Local Court study 1998 pg. 20

and in some areas⁷⁹ people will sometimes wait long periods outside the courthouse when even one justice falls ill.

(2) Poor conditions of service

- the general research finding by the aforementioned bodies received a complaint on the poor conditions of service the court officers incur. Their conditions of service are designed subject to the General Orders⁸⁰ at the level of all civil servants. This questions the independence of the judiciary as dictated by the concept of the separation of powers.

(3) Training: officers and justices of the court have no training before or during

their term of office.⁹⁸¹This means, they are expected to be able to administer the

law without training on how to so.

- (4) Another constraint is the lack of feedback on appeal cases, observed by Afronet on research. This, they argue defeats the whole purpose of guidance by the decisions of the superior courts. Local courts then have no way of knowing which of their decisions have been reversed by the superior courts and for what reasons.

⁷⁹ Op. cit

⁸⁰ ZLDC findings- Review of the Local Courts

⁸¹ Ibid

The above-mentioned constraints are greatly disturbing. The findings outline the picture of a local court justice who does not have decent accommodation, stationary and equipment. Added to this he has poor conditions of service, no training and little or no guidance. With no training or guidance, what is the quality of the work produced?

5.1.2 QUALITY OF WORK

The Zambia Law Development Commission carried out a number of court observations throughout the country.

These were some of the observations;

In Lusaka province⁸² at the Boma court two cases on the appointment of administrators were observed, one on divorce, one on adultery and one on premarital pregnancy were also observed. The general findings were that;

- there were delays at the beginning of the court sessions.
- there were many routine cases having similar facts
- there was a lack of personnel (such as interpreters)
- the court justices appeared to command the litigants, especially women.

⁸² ZLDC. Review of Local Courts Lusaka Province (Lusaka Urban) preliminary findings Report March 2003. Pg. 5

- The burden of proof was not weighed and essential documents were not produced in evidence
- Court clerks tended to call for new cases, rather than old cases, which were omitted leading to the delay of justice.
- Justices appeared biased in relation to litigant's tribes.

In other Lusaka courts, justices⁸³ even framed questions for parties during cross-examination. Court clerks were observed to be passing unpleasant comments in the presence of litigants and speaking abusively of them.

In yet another court justices were observed to switch languages, an action that appeared to confused litigants. These justices also conducted separate proceedings simultaneously, which was observed to also have disturbed litigants.

In Chilenje local court,⁸³ one justice misinterpreted the percentages for distribution of an estate according to the interstate succession Act, 1989 and allocated 60% to the children.

The above findings show indiscipline irregularity, disrespect for litigants, general carelessness, disregard and poor understanding of the law. This, may be as a result of the lack of training and guidance form Higher

⁸³ Matero. on page 5- 6

⁸³ Lusaka Province Report Pg. 6

courts, it may also be as a result of the lack of adequate disciplinary procedure, this being absent in the act establishing the court itself. Justices appear to use only their personal discretion on the acceptance and screening of evidence because no training is provided on how to do this.

In some cases where judgments are delivered, no reasons are observed to be given. Judgments are simply passed. The ZLDC's Southern Province report¹³ in their research findings report some such cases. One case, of civil jurisdiction, was in Choma local court. This was the case of Mexon Himambe v George Chuzana¹⁴ the plaintiff alleged that the defendant falsely accused him of stealing a chicken and claimed defamation of character. The court dismissed the case on the grounds that the plaintiff claimed he was beaten by the defendant and other people but could not produce any medical or police report to prove the action took place.

This case shows no logical reasoning over the matter presented. The plaintiff claimed defamation of character; the holding was based on lack of evidence over a beating. As outlined in earlier chapters, one of the requirements of justice delivery is the courts ability to grant, or otherwise,

¹³ May 2003

¹⁴ Case No. 036/2003, reported on page 40 Ibid

+the claim of the complainant. This was clearly not done in the aforementioned case because the holding did not even address what the complainant claimed; the judgment was clearly independent of the complaint itself.

5.2 CONCLUSION

The gravity of the problem presented by the inadequacy of a properly established local court system is extreme. Justice Delivery is the permanent objective of the courts of law and as jurists have shown, it has many depends.

The local courts first problem is their establishing Act which falls poorly short of establishing a court fit to deliver justice in today's Zambia. It lacks substance and provides no disciplinary procedure to ensure delivery from court official.

The conflicting principles of law to be administered by courts pose a threat too to the delivery of justice, the higher court justices too find coping with this difficult. How then is it expected that a local court justice with no training can achieve the striking of balance between these conflicts? They lack the appreciation of the English law because of their lack of training, and this same lack of training keeps them assured of a lack of knowledge on the changes in even the values in customary law itself. It is no wonder that ZLDC's¹⁵ findings show that litigants have lost confidence in the court.

¹⁵ Review of the local courts Lusaka Province (Lusaka Urban) Report, March 2003, page 8.

The justices appear disgruntled because of their poor conditions of service and frustrating work environment, and this causes a lack of motivation for work and may be the reason officers appear rude and undisciplined. As found earlier, part of justice is attributed to the judge himself, therefore, where a judge is unhappy and callous, his judgment will reflect this callousness and though it is revised, where feedback is not given to him, he is likely to continue in this quality of work.

The quality of justice delivered by this court is of degenerate quality. Review is of the essence because in the absence of it, the majority of Zambians who visit these courts will inevitably suffer the sour hand of its injustice.

5.3 RECOMMENDATIONS

A number of recommendations have been suggested. Among these are;

- (1) Training for the officers of the courts. This training must be in the principles of justice delivery, relevant statutes law, ethics and evidence. It has also been suggested¹⁷ that the training involve basic accounting as well, and that this training must be regularly done to refresh their knowledge.

¹⁷ ZLDC Mongu workshop reports pg 91.

- (2) An independent set of conditions of service must be introduced and a disciplinary procedure code to apply only to the court.
- (3) The system of issuing contracts for 3 years service must be abolished.
- (4) The work environment must be improved to allow motivation for work and efficiency.

It may appear from all this that the local court has little or nothing is contribute to justice delivery, this is not the case. It must be noted that, though this essay condemns the standard of the court as it stands today, it does not recommend its abolition.

The court can be recommended to positively add to the delivery of justice in Zambia. The Zambian economy is poor and it cannot be argued to be predominantly monetized, therefore, it is unlikely that the average poor Zambian will seek redress in higher courts involving the cost of hiring lawyers and other expenses, should the lowest and simplest court not be in existence. Besides this, cases of a subsistence nature are better settled in small courts, which may deal with these cases easily and quickly. Local courts become the jewel in this setting.

The changing values of an emerging and developing nation coupled with the conflict of laws gives use to the emergence of new torts and offences- as a base court these discoveries may also find their birth in this court. It is not recommended that advanced and complicated evidence procedures be followed

and learned, but that the officers are generally made to appreciate and use the essence of correctly used evidence procedure and its cardinal contribution to the delivery of justice. This court is useful, but sadly, its usefulness has ceased to be of effect because it has been ignored. The cardinal recommendation is that the court be given the respect of status that the rest of the judiciary receives, the first step may be the amendment of the local courts act, but this will begin the snowballing effect of change.

BIBLIOGRAPHY

CASES

Local Government Board v Arlidge (1915) A C. 120
Chic fashions (West Wales) Ltd. v Jones (1968) 2 Q. B. 299

The People v. Davies Mumenno (1990 – 1992) ZR 13.

Mwiya V Mwiya (1977) Z.R. 113 (H. C.)

Chibwe Vs Chibwe S.C.Z Judgement No. 38 of 2000

Mexon Himambe v George Chuzana Case No. 036/2003

TEXTS

Afronet Local Court study 1998

Halsbury's laws of England, 3rd ed. Volume 14

Legality Journal 2002. The University of Zambia Law Association. "How Zambia Acquired a Dual Legal System, by Lillian Mushota 2002

ZLDC Review of the local courts Mongu workshop report

ZLDC Review of the local courts System Lusaka Province (Lusaka Urban) Report,

March 2003

ZLDC Review of the Local Court System Eastern Province Report, April 2003.

A.G. Guest, ed. Oxford Essays of Jurisprudence, A Collaborated Work. , Oxford University Press

Benjamin N. Cardozo. The Nature of the Judicial Process (1968) Yale University Press, New York Haven Connecticut.

B .O. Nwembweze. Judicialism in commonwealth Africa, (1981). C Hurst & Company

Hilary Allen. Justice Unbalanced. (1987) Open University Press. Miton Keynes. Philadephia.

H.W.R Wade, Administrative Law 5th Ed (1982) Oxford University Press, Oxford

John Hart Ely. Democracy and Distrust. A Theory of Judicial Review (1980) Harvard University Press, London, London.

John B Saunders, ESQ. Mozleys and Whitteys Law Dictionary (1970). Butterworths. London

J .W. Ehrlich. A Reasonable Doubt. (1965). Award Books New York

Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965, (1966) Oxford University Press

Otto, A Bird .The Idea of Justice (1967). Fredrick A Preager, publishers New York.

P M S Hacker, J. Raz. Ed. Law Morarity and Society. "Rules precedent by Rupert Cross" (1977) Clarendon Press Oxford.

R .W. N Dias. Jurisprudence 3rd Ed. (1970) Butterworths. London

T. Olawale Elias. The Nature of African Customary Law (1956) Manchester university Press, London

William Chambliss. Crime and the Legal Process. (1969) Mc Graw-Hill Book Company. New York

STATUTES

Local Courts Act, Cap 29, Section

The Constitution of Zambia, Cap 1 of the laws of Zambia
The Constitution of Zambia Act No. 17 of 1996
B.S.A Company Charter
The British Acts of Zambia, Chapter 10 of the Laws of Zambia
The English Law (Extent of Application) Act, Cap 11 of the Laws of Zambia
European Convention for the Protection Human Rights and Fundamental
Freedoms