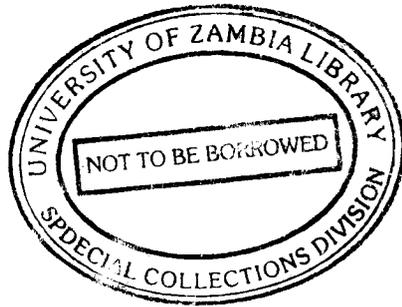


WHITHER JUSTICE:

**A CRITICAL ANALYSIS ON THE DELAYS IN THE
DISPENSATION OF JUSTICE IN ZAMBIA.**

BY



Evans Sodala

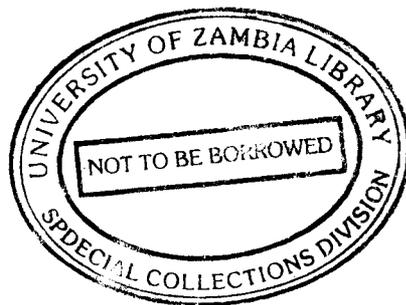
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DECLARATION

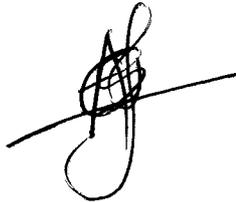
I, **EVANS SODALA**, Student Number **22089403** **HEREBY DECLARE** that I am the author of the directed research paper entitled "*Whither Justice – A Critical Analysis on the delays in the dispensation of Justice in Zambia*" and that it is the creation of my own ingenuity.

Due acknowledgment has been given where other scholars work has been used or cited. I truly believe that this paper has not been previously presented to the faculty of law at the University of Zambia for academic work.

Name:

Evans Sodala

Signature:

A handwritten signature in black ink, appearing to be 'Evans Sodala', written over a horizontal line.

Student Computer Number:

22089403

Dated this

6th

day of

February,

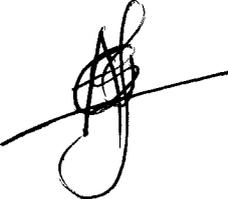
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Dated this **6th** day of **February**, **2008**

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LAW SCHOOL

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To my elder brother **Mr. Victor Phillip Sodala**, you are best brother one can have. You supported me financially throughout this program and without you I would never have achieved what I have today. You are truly an example of how family should live with each other. To my sister in law, **Cynthia Mulenga Sodala** for the words of encouragement

To my wife and best friend **Mrs. Ngayako M. Sodala**, for believing in me and putting up with me especially when I was busy with my work but most importantly you have been there walking with me through this life journey and understanding what it has taken to get to this moment.

To my siblings **Charity Sodala, Duncan Sodala & Mercy S. Munkombwe**, I am very lucky to have you not just because you are family but also because of the words of encouragement you have rendered throughout my trials and tribulations. I am forever grateful.

Last but not least my two sons, **Joshua Kachimera Sodala & Zachary Joseph Sodala**, I hope I have set a good example for you guys.

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To all the lecturers in the School of law: **Judge Phillip Musonda, Judge Kabazo Chanda, Mrs Mushota, The Attorney General Mumba Malila (SC), Dr. Ngosa Simbyakula, Professor Mvunga, Professor Anyangwe, Professor Alfred Chanda (M.Y.S.R.I.E.P), Mr. Frederick Mudenda, Mr. Watae, Mr. Godfrey Mulenga, Mr. Kulusika, Mr. John Sangwa, Dr. Patrick Matibini, Mr. Ngandu, Mrs Chanda N. Tembo and Mrs Munalula**. Thank you all for helping in molding me. I hope I won't disappoint you

Last but not least to **Mr. Chifumu Kingdom Banda, SC, MP**. Thanks for providing a platform for me and honing my solicitor skills. The lessons and Knowledge that I have acquired over the years will go a long way in ensuring that I will arrive in the profession with both feet on the ground and hit the ground running in the proper and only direction. To **Fatima Mandhu** for taking me under her wings and to **Bruno Rabson Njobvu** for the invaluable conveyancing knowledge.

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2. The High Court Act **Chapter 27** of the Laws of the Republic of Zambia
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GLOSSARY OF KEY TERMS AND ABBREVIATIONS

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|-----|-------------|--|
| (a) | <i>Cap</i> | Chapter |
| (b) | <i>HC</i> | High Court |
| (c) | <i>SC</i> | Supreme Court |
| (d) | <i>SCZ</i> | Supreme Court of Zambia |
| (e) | <i>Unza</i> | University of Zambia |
| (f) | <i>ZR</i> | Zambia Law Report |
| (g) | <i>ors</i> | Others |
| (h) | <i>SI</i> | Statutory Instrument |
| (i) | <i>UK</i> | United Kingdom of Great Britain and Northern
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| (j) | Blackstone | One of the most famous English jurists, best
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The author felt that since the timely delivery of Judgments by Judges & Magistrates is not enshrined in the Laws of the Republic of Zambia, quick dispensation of justice may be taken for granted by those on the bench and abused to the detriment of those seeking refuge and justice from the Judiciary.

The finds of this research are that the delays occasioned by the Judiciary cannot be solely attributed to the 'men and women' on the bench. While it is true that some delays are as a result of the failure by Judges and Magistrates to deliver Judgments in a timely manner some delays have been occasioned by factors such as lack of transport to convey accused persons to court, unnecessary adjournments on the part of counsel and failure to bring witnesses to court to conclude trials. The research also found that legislation may be necessary to compel Justices to deliver Judgments on time and amend some of the civil procedure practice so as to speed up justice.

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Chapter One

INTRODUCTION

1.1 The subject of this paper is an attempt to delve into the reasons behind the delays in the dispensation of justice in Zambia. The paper will specifically address the judicial delays caused by late delivery of Judgments as well as the prevailing rules and practice which may be in need of being addressed with the ultimate purpose of improving upon quality justice. It is now notoriously becoming a common fact that judgments from the judiciary take inordinately long before being delivered. In certain instances the judgment is delivered when the intended beneficiary is unable to enjoy the fruits of such labor on account of inordinate delivery of the Judgment.

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PROBLEM STATEMENT

It is a trite fact that every person is entitled to their day in Court. However, this should be extended to every person being entitled to the delivery of a Judgment within a reasonable time frame. The recent Presidential Petitions of 1996 and 2002 concerning the former President Mr. F.T.J Chiluba and that of the current President Mr. Levy Patrick Mwanawasa SC come to mind in that they took so long to complete that in essence they were rendered nugatory and mere academic exercises. It is rare to hear of a Judgment being rendered immediately after trial when such cases are those that could be dealt with an immediate Ruling or Judgment. 'Off the cuff' Judgments ought to become the order of the day especially with matters that can easily be dealt without much fuss or hindrance. In

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- (i) The practice and procedure currently applicable in the Subordinate Court, High Court and Supreme Court does not assist in speeding up the disposal of cases such as the impediment placed on an appellant who has to apply by way of notice of motion before the Supreme Court for Zambia for an injunction pending appeal when a High Court Judge has rejected the grant of an injunction as a single Judge of the Supreme Court cannot.
- (ii) Incompetence on the part of some Judges who are shielded from their inefficiency as a result of the almost permanent tenure of office and lack of a statutory mechanism to compel them to deliver Judgments in a timely manner.

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OBJECTIVES OF STUDY

The general objective of the study is to highlight the delays in the dispensation of justice in Zambia and recommend where necessary changes to the law in order to make it more efficacious to the delivery of justice in Zambia. The critique inter alia shall highlight the impact of the justice system in Zambia and the Civil Procedure practice and suggest ways in which the same can be improved upon to ensure that litigants are provided with the justice that is so much craved for.

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1.4**SPECIFIC RESEARCH QUESTIONS**

- (i) To conduct a rapid appraisal of the root causes behind the delays in the dispensation of Justice in Zambia
- (ii) To discuss in light of decided cases vis-à-vis the civil procedure practice, issues that have impacted on the quality of justice in Zambia.
- (iii) To indentify the areas in which legislation can be formulated to ensure the better delivery of Justice in Zambia.
- (iv) Consider examples of other countries justice systems and their civil and criminal procedure codes; how and what has been included in such Acts to meet the needs of our judicature system.
- (v) To make recommendations that are commensurate with our needs for necessary implementation in our laws.

1.5**JUSTIFICATION**

The research is and continues to be justified on the basis that as a nation we need a Judicial system that is responsive to the needs of a developing society such as Zambia in particular one that is capable of delivering justice in good and reasonable time within the confines of the law. It is an authenticated fact that a society without real justice as one of its cornerstones is one that will surely descend into anarchy.

A study such as this is expedient so as o bring to light some of the shortcomings of our justice system in particular its rules, practice and its impact to litigants and particularly how the justice system in Zambia can be improved upon in terms of

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ensuring timely delivery of Judgments. This can be achieved through the enactment of statutory provisions that will require a judgment to be delivered within one year of close of submissions. This will ensure that cases are disposed of unlike the situation were a litigant is left waiting for up to seven years to enjoy the fruits of his Judgment and unfortunately when the same is delivered a litigant has passed on thereby defeating the principles upon which justice is premised.

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METHODOLOGY OF STUDY

In order to capture the impact of the Judicial system and the rules and practice pertaining to the civil procedure code in relation to the delivery of justice; the study shall use methods of desk research and interview with relevant stakeholders in order to collect qualitative and quantitative data. Owing to the technical nature of the subject and time limits involved for the capture of a broader population the writer shall refer to reports compiled by professional bodies such as the Law Association of Zambia, Transparency International Zambia, Judicial Complaints Authority, scholars and other professional bodies in order to appreciate past and current concerns surrounding the delivery of justice. This will enable the writer to conduct a research that will drive to the core root causes underpinning the delays aforesaid

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highlight the root causes behind the delays in the dispensation of justice in Zambia and the argument for the imposition of a time frame within which a judgment may be delivered. Chapter Two shall cover the impact that the delays have had on society and the judicial system as a whole and the perceptions of corruption in the Judiciary. Chapter Three will cover the rules and practice that can be amended and what if any legislation that can be enacted to curb this scourge, Chapter Four is a look at other jurisdictions especially in the commonwealth and what if any can be learnt from the same in improving the judicial system, Chapter Five is the conclusion and the recommendations.

1.8 DEFINITION AND CONCEPT OF DELAYED JUSTICE

Like many other concepts, the concept of delayed justice does not have a readily acceptable definition. However, draftsmen, scholars and legal experts have tried to define it by derivative method: by defining the words “delayed” and “justice” individually and then combining the two definitions.

Betty Kirkpatrick in her Concise Oxford Thesaurus defines the term “delay” in the following terms namely postpone, put off adjourn, hold in abeyance, put on ice, put on the back burner. Other terms include hold up/back, detain, slow up, set back, hinder, obstruct, hamper, impede, bog down, check, hold in check, restrain, halt, stop, arrest, linger, loiter, hold back, dawdle, dally, dilly-dally, lag/fall behind, not keep pace, procrastinate, stall, tarry.

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Lord Hailshalm of St Marylebone LC defined delayed Justice in the following terms while adjudicating in the matter of R v Larwrence² as being:

“My Lords, it is a truism to say that justice delayed is justice denied. But it is not merely the anxiety and uncertainty in the life of the accused, whether on bail or remand, which are affected. Where there is delay the whole quality of justice deteriorates.”

Catherine Soanes in her Pocket Oxford English Dictionary defines delay in the following terms namely ‘make late or slow’, ‘put off to a later time’, ‘the amount of time for which someone or something is delayed’ and ‘the action of delaying’.

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INTERVIEWS WITH STAKEHOLDERS

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stakeholders. The first interview conducted was with a Kabwe Magistrate Mr. Davies Chali Mumba to get his views on the subject.³ The Honourable Magistrate observed that the delays in the dispensation of justice in Zambia could not be solely attributed to particular persons but that the same extends to an array of factors. One such factor pointed out by his Honor, was that accused persons are brought to court late and this in some instances had taken as much as two months. Other factors outlined include that of lack of transport to bring accused persons to court resulting in failure to commence cases and lack of a legal library to help in research before arriving at a Judgment. The latter is particularly pronounced in rural stations such as Kabwe.

The second interview conducted was with a Ugandan National, Mr. Wilbroad Osinde Wangwor who was a Minister of Legal Affairs during the time that the late Milton Obote was in power. He was later appointed as Chief Whip for the Ruling Party, a position he held until Obote was overthrown by Idi Amin. He joined Obote in exile in Zambia and was appointed as Principal State Advocate in the DPPs Chambers a position he held from 1990 to 1998. He is currently a Legal Consultant with Messrs Chifumu Banda and Associates.⁴ Mr Wangwor opined that on a comparative basis the late delivery of Judgments was never a problem during his time in Uganda and this was attributable to the principles and ethics generally adhered to by the men and women on the bench. He was also of the view that the establishment of the Constitutional Court in Uganda has greatly

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Mr. Wilbroad Osinde Wangwor strongly disagrees with this writer on the issue of the imposition of a time limit within which a Judgment should be rendered. He views this a recipe for the erosion of the independence of the Judiciary. He opines that Judges should be left alone to deliver Judgments in their own time and that an imposition of such a law would result in bad Judgments being delivered mainly account of the fear in failing to comply with the law. He cements this view the belief that it is better to have one bad egg on the bench than spoil the whole bench with a law that will only serve to intimidate judges.

The last interview conducted by the writer was with a litigant in the matter of Solomon Mbewe and Others v Barclays Bank of Zambia Plc⁵ whose Judgment is being awaited five years after counsels for both parties filed their submissions. Mr George Nyangu is one of the several Plaintiffs who took their former employer to court for the determination of their claims.⁶ Mr George Nyangu explains how numerous attempts have been made by their advocates, Messrs Chifumu Banda and associates and themselves but to no avail. This has included several reminder letters to the marshal to enquire about the possibility of a date of Judgment. Other attempts include a visit to the Judicial Complaints authority which yielded a friendly advice that the complaint had the potential of annoying the presiding Judge thereby resulting in an unfavourable Judgment

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- (a) Shortage of court rooms.
- (b) Inadequate number of judges and magistrates, leading to dealing with abnormal workloads.
- (c) Inadequate remuneration and lack of incentives.
- (d) Upward trend or explosion in the number of cases brought before courts.
- (e) Lack of lawyers at the legal aid department and state chambers.
- (f) Arrogance on the part of some judges arising as a result of the almost permanent tenure of office and discretionary powers to commit for contempt of court which tends to shield some judges from inefficiency.
- (g) Incompetence on the part of some lawyers leading to abuse of process and frequent applications for adjournments.

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Report of the Special Committee (March 1993). The Senior lawyers who were members of the Committee were Mr. S.M Malama of Jacques & Partners, Kitwe; Mr. M. Lwatula of Ellis & Co., Lusaka; Mr. N. Kawanambulu (Deceased) then of Nosiku Kawanambulu & Company, Lusaka and Mr. D. Kafunda (Deceased) then of Kafunda & Co., Ndola

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- (h) Lack of transport leading to accused persons not being taken to court or magistrates and judicial personnel reporting to work on time.
- (i) Lack of punctuality and Supervision on the part of some judicial personnel.
- (j) Lack of residential accommodation. Some Magistrates are accommodated in shanty compounds at their own risk.
- (k) Lack of facilities and tools like typewriters; some of the typewriters are obsolete. Some stations have inadequate law books. The Kitwe High Court is a case in point.
- (l) Lack of competent and qualified supporting staff. Some supporting staff are not trained for the jobs they are performing
- (m) The practice and procedure currently applicable in the High Court and subordinate courts does not assist in speeding up the disposal of cases ⁸

It is clear from the highlighted areas by the special committee that some of factors alluded to in the report are still relevant fourteen (14) years on, in particular those enumerated under paragraphs (f), (g), and (m). In regards to the concern outlined in paragraph (f), the cases of *Godfrey Miyanda v The High Court* ⁹ and *Godfrey Miyanda v Matthew Chaila (Judge of the High Court)* ¹⁰ are illustrative of this. The brief facts of the latter case are that the Petitioner had commenced a civil action on the 10th day of September, 1981 before the Late Judge, Mr. Justice Matthew Chaila. Hearing commenced on the 22nd day of August 1983 and was concluded on the 7th day of September 1983. Judgment was only delivered a year and a month latter on the 18th day of October 1984. Unhappy with this display, the Petitioner sought redress in light of the late delivery of Judgment. The Learned

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“The applicant asked what should happen if a High Court judge refuses or fails to perform his job within a reasonable time (as enjoined by Article 20(9) of the Constitution) or at all. It is unnecessary from me to answer this question but I have no doubt in my mind that the remedy of mandamus is not available against the judges of the superior courts of this country in the event of an alleged failure to perform their judicial functions.”¹¹

1.11 Argument For Legislation Requiring Delivery Of Judgments Within a Prescribed Time Period

The Judgments of the Learned Justices Mr. E.L Sakala and Mr. Matthew Ngulube cannot be faulted as the same were premised on the prevailing law. There is no law currently that can compel a Judge of the High Court to deliver a Judgment within a prescribed time period. The justices are vested with the discretion to deliver judgments in their own time and this is in keeping with the independence of the Judiciary. However, the problem with the foregoing is the growing trend that on account of this shield the delays are now increasingly longer and the same

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is a source of concern and as such the absence of a prescribed time period for delivery of judgment should be critically addressed forthwith.

For example in the case of *Ben Chitundu v. The Attorney General*¹² the Learned Justice feebly attempted to extricate himself in this the manner hereunder set out;

“It is deeply regrettable that due to the fact that no specific date was fixed for judgment, when the submissions were filed in, the file was kept by the registry and I subsequently moved away from the High Court to the Industrial Relations Court. The file therefore remained unattended until when the oversight was brought to my attention by recent query. The delay is deeply regretted...”¹³

Admittedly, this paper is not an attempt to question the integrity of the Learned Justices nor to preach a classical notion of perfection, but rather to seek to expose some inconsistencies that occur in the law leading to potential injustice to which a lasting solution compatible with our treasured democracy ought to be mooted. Article 98 (2) of the Constitution of Zambia¹⁴ secures the tenure of the learned justices of the Supreme Court and High Court in the following manner;

“A Judge of the Supreme Court, High Court, Chairman or Deputy Chairman of the Industrial Relations Court may be removed from office only for inability to perform the functions of office, whether arising from infirmity of body or mind, incompetence or misbehavior and shall not be so removed except in accordance with the provision of this Article.”

However, this guarantee of office should not be wielded in such a manner as to trample on the rights of the citizenry at their expense but to ensure that justice is delivered in a timely fashion. When a Judge has heard all the evidence in a matter and the learned counsels have filed in their requisite submissions, one would

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This paper will therefore seek to address the measures that can be implemented to ensure that Justice is fairly administered and that the ‘legendary delays’ ¹⁶ as alluded to by the former Chief Justice Mr. Matthew Ngulube in his article entitled ‘Challenges of the bench’ are indeed ‘consigned to the dustbin.’ The oath that a Judge takes is a commitment to live up to certain ideals which include to safeguard, protect and promote the enjoyment of the people of their basic rights and freedoms. The Judge is expected to live up to these ideals to ensure that the judicial process is fairly and equitably applied without fear or favour and without trampling on the rights of the people which the judge swore to uphold.

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Chapter Two

INTRODUCTION

2.1 The last Chapter focused on a brief introduction to the subject at hand. It also looked at the root causes behind the delays in the dispensation of justice in Zambia as well as the argument for the formulation of a law that would require the delivery of Judgments within a prescribed time period. This Chapter will centre on the impact that the delays in the dispensation of justice have had on society in general and the judicial system as whole.

The Effects on Society caused by delays in the dispensation of Justice

2.2 It is undoubted that the confidence of the public has eroded in light of the delays in delivery of justice.¹⁷ This lack of confidence by the court users has led to a general belief that the system of appointments of Judges by the President does not augur well as there is a seemingly widely held belief that cases involving the state will inevitably be decided in their favour. It therefore goes without saying that the whole appointment system especially with the High Court and Supreme Court are in dire need of reform so that Justice is not only seen to be done but ultimately regarded as something within the reach of the general populace. This entails that Justice must be meted out equally, fairly and should be dispensed without undue delays that may tend to prejudice the litigating parties. This stems

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from the fact that the appointing authority in this case, the Republican President is from one arm of Government, the executive and this power gives him undue advantage especially when it comes to matters which are adjudicated by the Judiciary and which the President has a direct interest in their outcome. One such obvious interest is where the President has had his election petitioned and thereby has a direct interest in such outcome. Judges appointed by the President will then feel duty bound to render a decision that best suits the appointing authority.

PERCEPTION OF CORRUPTION IN THE JUDICIARY

2.3 There is a general belief that is held by the general public that some of these delays in the delivery of Judgments are attributable to some corrupt practices at play. The Zambia Daily Mail¹⁸ carried a report about the Former Minister of Justice, Frederick Chomba and Dr Roger Chongwe, a lawyer following a television programme entitled “Good Governance” on the 27th May 2007. Mr. Justice Chomba is quoted as having said:

“ There are incidences where some lawyers take their clients for a ride. This is normally done with the help of other people in the Judiciary, mostly support staff. Such cases are difficult to prove”

On his part, *Dr Roger Chongwe* was of the view that:

“It is true that there are some greedy lawyers, wolves. Wolves dance with partners and these are found within the Judiciary. There is need to stop this trend by corrupt lawyers by retraining them to remind them about their ethics and also for the purposes of capacity building.”

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The Learned Chief Justice, Mr Ernest Linesi Sakala has also weighed in with his view on the delays in the dispensation of justice. The Sunday Post carried a Report following the swearing in of new magistrates at the High Court premises on the 6th day of July, 2007 ¹⁹. He urged magistrates to avoid becoming parties to the delays in the dispensation of justice. In a speech read his Honor he stated that;

“In a way, the criticism is justified. But we all know that delays in the administration of justice are not only caused by men and women on the bench; but you will have to help stop the delays by being strict through refusal of unwarranted applications for adjournments aimed at delaying your cases.”

The Guardian Weekly Newspaper also carried a report in which it quotes the Learned Chief Justice speaking at the High Court Conference room ²⁰ during a meeting with the Elijah Banda led LAZ committee. He stated that:

“Although courts are frequently blamed for these Adjournments, it is a notorious fact that a good Number of adjournments are caused by some lawyers Who at times do no attend court sessions. What has LAZ done to correct these delays.”

From the foregoing it is clear that the laws delays cannot be attributed solely to the men and women on the bench alone but this extends to the legal fraternity in general. The frequent adjournments are mostly on account of failure by Counsel to attend court sessions and at other times as a result of failure to obtain instructions from clients or simply unwarranted non-attendance. The support staff at the Judiciary are equally not blameless. Lost case files and exhibits that

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disappear are all far too common. As custodians of case records and exhibits, the support staff are directly to blame for any such loss.

2.4 **THE IMPACT THAT THE DELAYS IN THE DISPENSATION OF JUSTICE HAVE HAD ON THE JUDICIAL SYSTEM**

The World Bank Survey of 2004²¹ reported that about 40 per cent of households and 25 per cent of business managers reported that bribes were paid to speed up legal proceedings. A former local court justice is alleged to have solicited Fifty Thousand Kwacha (K 50,000) as an inducement to find in favour of a litigant²². This resulted in his conviction of corruption in 2002.

To counteract these delays, legislation has been introduced to try and rectify loopholes that encourage delays. To this end the Judicial code of conduct Act²³ was enacted which provided for a Judicial complaints authority as per Section 20 (1) of the aforementioned act. The establishment of the Judicial complaints authority is obviously a welcome move. The Act however, is at a risk of rendering the authority a 'toothless bulldog' because it does not adequately provide for effective sanctions for late delivery of Judgments by the men and women on the bench. This is by and large the most intolerable delay especially where no legally justifiable reason is advanced for the same. A litigant looks forward to the receipt of a Judgment within a reasonable time frame after closure of trial. When this period becomes inordinate there is reasonable cause to raise concern.

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The Judicial code of conduct Act ²⁴ provides as follows in relation to Sanctions available against an erring Justice;

- “(a) in the case of the Chief Justice, the president;
- (b) in case of a judge, the Chief Justice, who may admonish the Judge concerned and in the case of a breach requiring removal under subsection (2) of the article ninety-eight of Constitution, the Chief Justice shall inform the President;
- (c) in case of the Registrar, the Chief Administrator, who shall inform the Commission;
- (d) in the case of a Magistrate, the Director of Local Courts or any other judicial officer, the Registrar, who shall report to the commission for action; and
- (e) in case of a Local officer or justice, the Director of Local Courts, who shall report to the commission for action.”

The foregoing clearly illustrates the notion that the Act risks rendering the Authority a ‘toothless bulldog’ by the failure to provide a sanction for failure to deliver a Judgment in a timely manner. The position is as it was held in the decided case of Godfrey Miyanda v Matthew Chaila (Judge of the High Court) ²⁵ as per Justice Mr. E.L Sakala to the effect that a Judge could not be taken to court on account of failure to deliver a Judgment in a timely manner. The Failure to equip the Authority with such as essential whip ensures that an erring Judge will go about his ways knowing fully well that his protected tenure of office shall continue to run without any fear of sanctions from the Authority. Essentially it would be ideal to have in place measures that would attract some form of sanction such as suspension, loss of income or in the extreme cases, the removal from office on account of failure to execute duties with expedition.

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- 3.1 This Chapter will focus on the rules and practice currently obtaining in the legal profession that may be a hindrance to the prompt resolution of cases before the learned women and men on the bench. The Chapter will also explore the possibility of enacting laws specifically aimed at ensuring the quick dispensation of Justice.

THE PRACTICE RELATING TO ADJOURNMENTS

- 3.2 A practice has crept into the legal profession whereby cases being litigated upon before the courts of law end up being adjourned on baseless and at times on grounds bordering on pure professional negligence. This kind of practice has contributed to the delays²⁶ in conclusion of matters and this fact was alluded to by the Honourable Chief Justice, Mr. Ernest Linesi Sakala when swearing in new magistrates on the 6th day of July 2007 at the High Court grounds.

It is an injustice for advocates to churn out unnecessary adjournments thereby prolonging the quick resolution of their clients claims. The tendency by some advocates not to appreciate the seriousness of court proceedings and/or hearing dates is worrying and the increasing number of adjournments on flimsy grounds. The matter is compounded further by the fact that owing to the backlog of cases

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facing most judges, the matter ends up being adjourned to a further date which is further on down the line. The same may prove not only to be costly to both advocate and client but may end up being inconvenient as the same is being given pursuant to the availability of dates in the court diary. Such a date may clash with the advocates diary and as a result the delay is further exacerbated.

The practice pertaining to adjournments from the foregoing is clearly in need of some redress. It is imperative that advocates are able to proceed with matters before court at the appointed time and that clients are not inconvenienced and put to great expense on account of being unprepared. The Report of the Special committee ²⁷ appointed by the appointed by the Law Association of Zambia in 1992 raised the issue of incompetence on the part of some lawyers leading to abuse of process and frequent applications for adjournments. That this concern is one that is still relevant today as it was then, and as such some kind of deterrent from the men and women on the bench is paramount. Borrowing from the sentiments of the Chief Justice when appointing New Magistrates as aforementioned herein, the bench ought to be strict by refusing to endorse adjournments that are clearly aimed at delaying the conclusion of cases.

The establishment of the Commercial Registry under Statutory Instrument No. 29 of 1999²⁸ is a step in the right direction given in light of the rules that govern the running of the Court. These include a fast track system to ensure that all matters

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commenced under it are completed within six months. Additionally, the Court imposes sanctions for unnecessary adjournments and the party in default is liable to pay a fee currently One Hundred and Fifty Thousand Kwacha which amount is to be settled before the next hearing date failure to which further sanctions are meted out. The only drawback is that the Commercial List is confined to transactions which fall within the realm of commerce, trade, industry or any action of a business nature. In essence the General List which is run by the Principal Registry does not adhere to the rules of the Commercial Court and this is where the majority of court matters are commenced. It would make practical sense to apply the rules governing the commercial list to the General list particularly in regard to the flimsy adjournments attracting fines and for ensuring that matters are set down for trial within a specified time period.

3.3 SUPERVISORY JURISDICTION OF HIGH COURT OVER SUBORDINATE COURTS

Section 94 (7) of the Constitution of Zambia²⁹ confers supervisory jurisdiction on the High Court of Zambia over all subordinate courts. The reality on the ground however, is that the High Court has failed to administer this role effectively on account of some of the glaring injustices being perpetuated on a daily basis. One such injustice is the failure by the Honourable Magistrates failing to adhere to the simple etiquette of time. It is now commonplace to hear of a Magistrate commencing sittings at 12 noon. This is despite Advocates who often have busy diaries having appeared in good time in some instances as early as 08:00 hrs in the hope that a matter that has been scheduled for a particular time being heard.

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3.4 **THE RULE RELATING TO APPEALS ON ASSESSMENT OF DAMAGES FROM THE DEPUTY REGISTRAR**

The position that an appeal against assessment of damages by the Deputy Registrar lies to the Supreme Court and not a High Court Judge in Chambers was enunciated in the decided case of J.K MPOFU v IMPREGILO RECCHI (ZAMBIA) LTD AND GOODWIN MUNGANDI ³⁰. The Learned Mr. Justice Ernest Linesi Sakala at the time that he was a High Court Judge stated as follows;

“I take the view that the deputy registrar and a judge in chambers on assessment of damages exercise the same jurisdiction. Otherwise the practice of referring to the deputy registrar for assessment of damages would be rendered meaningless. I decline to entertain this application on ground lack of jurisdiction.”

This Judgment was premised on an earlier Ruling which was also delivered by the Learned Mr. Justice Ernest Linesi Sakala in the matter of Ernst Karl Lembe v Kearney & Company ³¹ in which his Honor stated as follows;

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Deputy Registrar on a matter referred to him by a Judge is made on behalf of the Judge and hence it is the decision or order of the Judge who referred the matter to him. While order 30 rule 10 (1) of Cap. 50 may be said to be wide, it would in my view be a contradiction that a decision made by the Deputy Registrar on behalf of a Judge should be appealable to the same Judge or court of the same Jurisdiction.”

This position however, does not serve the ends of justice well and is wrongly premised. This is on account of the fact that while appeals on assessment of damages lie to the Supreme court, all other appeals from the Deputy Registrar lie to a High Court Judge in Chambers as provided for under Order 30 Rule 10 of the High Court Rules ³².

The insistence therefore that appeals on assessment lie to the Supreme Court when other appeals of a different nature from the Deputy Registrar lie to a High Court Judge in Chambers is contradictory. A High Court Judge is well placed and equipped to handle an appeal on assessment of damages from the Deputy Registrar in the same manner that a High Court Judge would deal with all other appeals emanating from Deputy Registrars. The procedure as it obtains now only serves to delay the quick resolution of matters given the Supreme Court calendar which has limited times during the course of the year at which matters are dealt with. The equating of a Deputy Registrar with that of a High Court Judge as having similar jurisdiction in such instances is a failure to take cognizance of the immense array of skills that a High Court Judge has in comparison with that of a Deputy Registrar especially that of the fact that a High Court Judge has more

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For the reasons aforestated it is only prudent that this rule and practice be revisited with a view of overhauling the same so that appeals from assessment of damages by the Deputy Registrar lie to a High Court instead. In so doing the ends of justice would be better served as matters would be disposed of within reasonable time without the need to subject the same to an appeal process to the Supreme Court.

3.5 NON-AVAILABILITY OF AN INJUNCTION PENDING TRIAL FROM A SINGLE JUDGE OF THE SUPREME COURT

Normally, when Judgment has been delivered by a trial Judge, the losing party be it the Plaintiff or the Defendant as the case may be is allowed a period of thirty days within which to file an appeal to the Supreme Court as provided for under Order XLVII of the High Court Rules³³. The appealing party is also at liberty to apply for a stay of execution of the Judgment pending the hearing and determination of an appeal to the Supreme Court. The stay in such instances is granted by the trial Judge upon application by the appellant for the grant of the Said order. In the event that the trial Judge refuses to entertain such an application should he/she be of the view that there are insufficient grounds for granting such a

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stay, the appellant is at liberty to apply to a single judge of the Supreme Court to grant a stay of the trial Judgment pending the hearing and determination of the appeal to the full bench of the Supreme Court. This is provided for under Section 48 of the Supreme Court Act ³⁴.

However, this is not the position when a trial Judge has discharged an order for interim injunction before the conclusion of trial. Unlike a Judgment of the trial Judge or the refusal to grant a stay, a single Judge of the Supreme Court cannot grant an order of an injunction pending determination of trial as such jurisdiction lies before the Supreme Court. The very essence of granting an order for an injunction was aptly stated in the case of *Shell and BP Zambia Limited Conidaris & Ors* ³⁵ in which it was held that:

“A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the Plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired.”

From the foregoing, it is clear that a party whose injunction was been discharged By the trial Judge lies at a great risk as a single Judge of the Supreme Court cannot quickly act to maintain the status quo as the party has to make a notice of motion to the full bench of the Supreme Court. It is a trite fact that obtaining a hearing date before the Supreme Court even on urgent applications is an arduous and long process especially given the fact that it is determined by the FULL

³⁴ Chapter 25 of the Laws of the Republic of Zambia
³⁵ (1975) Z.R 174

stay, the appellant is at liberty to apply to a single judge of the Supreme Court to grant a stay of the trial Judgment pending the hearing and determination of the appeal to the full bench of the Supreme Court. This is provided for under Section 48 of the Supreme Court Act ³⁴.

However, this is not the position when a trial Judge has discharged an order for interim injunction before the conclusion of trial. Unlike a Judgment of the trial Judge or the refusal to grant a stay, a single Judge of the Supreme Court cannot grant an order of an injunction pending determination of trial as such jurisdiction lies before the Supreme Court. The very essence of granting an order for an injunction was aptly stated in the case of *Shell and BP Zambia Limited Conidaris & Ors* ³⁵ in which it was held that:

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BENCH of the Supreme Court. In circumstances, a litigant is subjected to unnecessary delays thereby denying the justice that is craved for by the party at hand. In the decided case of Manal Investments Limited v. Lamise Investment Limited ³⁶ it was held that;

- “(i) In terms of section 4 of the Supreme Court Act, a single judge has no powers in matters of injunctions as the same involved a decision of an appeal or final decision on the matter.
- (ii) Where the High Court has refused to grant an interim injunction, the aggrieved applicant may have no immediate remedy. The Supreme Court may grant an interim injunction pending determination of the main action in order to prevent irreparable damage.”

From the foregoing, it is clear that an aggrieved party is at a great risk and as such a rule ought to be revisited so that the ends of justice are better served. The lack of an injunction in certain instances render the proceedings nugatory and a mere academic exercise. It is therefore imperative that the time within which the court

(Supreme Court) can hear the injunction is shortened such as by allowing a single Judge of the Supreme Court to hear it or in the alternative appoint a panel of three or two High Court Judges to determine the fate of such a litigant.

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Chapter Four

INTRODUCTION

4.1 The Chapter will focus on justice systems existing in other jurisdictions, particularly commonwealth countries and to reflect as to whether anything from the said jurisdictions can be adopted or learnt so as to make the delivery of timely Judgments a reality.

4.2 THE UNITED KINGDOM PERSPECTIVE

The Justice system in the UK is aided and cushioned by the Jury System. Historically, the medieval jury was active it had to make enquiries, collect testimony and find out what had happened before it came to court. The process of transformation into the passive jury of today is not well understood, but by the 16th century it had become expected that the jury would be ignorant of the facts of the case. In terms of eligibility for jury service, until 1974 eligibility was governed largely by out-of-date property qualifications.³⁷ In 1965 the Morris Committee recommended that subject to certain exempted categories, juries ought to be selected from all of those on the electoral register.

This was eventually implemented by the Juries Act³⁸. Under this Act a person is eligible for jury service who is between 18 and 65, is included on the register of electors and has been resident in the United Kingdom for at least five years since

³⁷ **Politics of the Judiciary** – *Service on juries was previously based on property qualifications and this affected the right of women to serve on jury as women apart from being denied the right to vote, did not also qualify to own property thus unable to sit on a jury. (Professor Griffith) pp. 96-99*

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the age of 13. There is a proposal to allow persons aged 65 to 70 to sit as jurors if they wish. It is also proposed to remove the right of the defence to challenge jurors if they wish. The argument here is that the jury should be a cross-section of the community and that these changes help to maintain this ideal. There are three categories exempting persons from sitting on juries. They are said to be 'ineligible', 'disqualified' or 'excused.' Those ineligible include Judges, those concerned with the administration of Justice and the clergy. They are kept off juries because of the undue influence they might wield because of their experience. Those disqualified include anyone who has been sentenced to life imprisonment at anytime and anyone the previous ten years.

It is an offence to sit on a jury knowing that one is ineligible or disqualified. Concern has been expressed in recent years about persons who are disqualified from serving on juries. In July 1984, the disqualification rules were altered by the Juries Disqualification Act ³⁹. Under the Act, anyone who has served any period of imprisonment during the previous ten years is debarred from service. So is anyone who has received a suspended sentence of imprisonment or detention or a community service order during the previous ten years. So too is anyone placed on probation during the previous 5 years. A person sentenced to imprisonment or youth custody for five years or more is permanently disqualified. Those who are EXCUSED as of right if they wish are persons said to have more important business elsewhere , such as Members of Parliament, members of the House of lords, full-time members of the forces and doctors, dentists and others in the

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medical profession. Requests for excusal can be made on an individual ad hoc basis if proper cause can be shown. Illness, physical disability or insufficient understanding of English would always constitute valid grounds for excusal. But applications can also be made on grounds of special hardship because, for instance, holidays have been booked for that period, or the juror has very young children to look after or an examination to take. Until recently, the actual process of selecting names was somewhat haphazard. Each summoning officer had his own method. In, 1981 a new system was introduced nationally whereby the jury summoning officer calculates how many jurors will be required and, having made a random selection from the electoral lists, sends out his summonses so as to give at least four (4) weeks warning. The summons comes with an explanatory leaflet about jury service, a leaflet on jurors expenses including a form regarding claims for loss of earnings, and a reply envelope to return a form stating that the person concerned is either qualified to serve or not.

Trial by Jury is a unique institution by which verdicts may be founded on factors which have little to do with evidence. As Lord Devlin once remarked:

‘the law may be made as flexible as possible but the justice of the case cannot go beyond the furthest point to which the law can be stretched. Trial by jury enables juries to go beyond that point’⁴⁰.

One of the advantages of a Jury system is the aspect of accountability. In essence this means that the state has to justify every serious prosecution of an individual to twelve of his peers chosen at random from the community. It is one of the checks which keeps the state in tune with society at large. It introduces a healthy

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element of democracy into the administration of justice⁴¹ it is an aspect of the maxim that justice must be seen to be done, and it is particularly important in complex trials. In carrying out this function the prosecution fulfils a subsidiary role in educating citizens as to their rights and duties under the law. On the other hand, this process allows jurors to contribute by defining the limits of culpability by acting as a check on the power of the state or simply by interpreting concepts such as dishonesty, self-defence and freedoms of expression and assembly.

The Jury has long being a safeguard (albeit an imperfect one) against the abuse of power by the Judges. *Blackstone* termed the same as ‘the violence and partiality of Judges appointed by the Crown.’⁴² In Zambia this partiality and bias is pointedly clear when the State is a party to an action before the Courts of law. In the United Kingdom, the value of the jury as an agent for resisting the power of the state particularly in political prosecutions has been seriously questioned in recent years. However, the failure by Juries in certain instances to protect individuals has often been a result of state inspired prosecutions, biased Judge or deficient legal process.

While it is appreciated that a Jury system is an expensive mode of trial particularly given the fact that Zambia is a third World country whose resources would be severely tested to the hilt, the fact is that a modified version from that applied in the UK may be used so as to bring about the much craved for Justice.

⁴¹ **Ibid, note 37 – a number of continental countries abolished trial by jury after they had abandoned democratic principles. This was the case with Italy in 1931 after the fascist party had formed government. In Portugal trial by jury was abolished in 1927 after Gomez de Costa had established a dictatorship. In Spain trial by Jury was given up when General Franco seized power in 1936, and in France the Vichy Government of 1941 was responsible for the abolition of the jury. France has since has since restored the jury after the death of Franco, in 1975 the new Spanish constitution made provisions for the return to jury trial.**

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4.3

THE COMMONWEALTH PERSPECTIVE

Throughout the commonwealth and other British dominions there has been a Practice of using smaller Juries⁴³. Hong Kong has a Jury of seven, in the late 1940s diverse countries such as Aden, Ceylon, the Farklands inslands, Jamaica, Dominica, Mauritius and Nyasaland all maintained smaller juries except in capital cases, where generally but not exclusively, it was twelve (Fiji and Ceylon each had juries of seven). In Hong Kong the Jury system is somewhat unusual; although the common language is Cantonese and only 1% of the population speak English, trials are conducted in English. The effect of this arrangement (which may be necessary) is that jurors are drawn from a narrow section of Society: middle class and educated. Thus the vast majority of defendants are not tried by their peers.

The other odd feature of jury trial in Hong Kong relates to the right to elect trial. Cases may be tried in the District Court before a Judge sitting alone and more serious cases tried in either court but the choice lies solely with the prosecution. It is difficult to draw any useful conclusions comparing these elect trial. Cases may be tried in the District Court before a Judge sitting alone and more serious cases tried in either court but the choice lies solely with the prosecution. It is difficult to draw any useful conclusions comparing these different forms of Jury trial. Each system has developed over a period of time in response to many factors which may be peculiar to each Country. Most systems

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have attractive features but it seems unlikely that any aspect of a given system which is more than merely peripheral could find acceptance elsewhere.

4.4 APPLICABILITY OF THE JURY SYSTEM TO ZAMBIA

Despite the obvious attributes that a Jury System may have, it is pertinent to consider as to whether a developing country such as Zambia with all its economic problems can successfully administer the same without any difficulties. The First and foremost impediment is financial. A jury system is expensive to run as jurors would have to be reimbursed for the time spent while on service to the Judiciary. In Western jurisdictions jurors have to be sequestered to avoid any undue prejudice they may develop. This entails the Judiciary having to foot lodging expenses, food and transport. In a country such as Zambia where trials can take up to 2 to 4 years to complete the Judiciary may run the risk of mounting costs that may be unbearable.

Additionally, the literacy levels in Zambia are not that high and if the jury was to be selected randomly as is done in the United States of America, there is a strong possibility of coming up with a jury that has no knowledge of matters being adjudicated upon in court and therefore serve no useful role in the attainment of Justice.

Undoubtedly, a Jury system despite its drawbacks can be an invaluable addition to the Administration of Justice in Zambia. A specialized jury panel with fewer members in the region of 5 to 7 can be chosen to sit with a presiding Judge to

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Chapter Five

CONCLUSION

5.1 THE DELAYS RELATING TO LATE DELIVERY OF JUDGMENTS

This research has centered on the delays in the dispensation of justice in Zambia and clear examples have been given as illustrations to this obviously worrying trend that only serves to erode the faith that has been placed on this very important institution. From this research it is possible to draw some conclusions from the various instances of delay that have been presented. One such conclusion is that the late delivery of Judgments by the Courts of law has in some cases been so inordinate and unreasonable that the very ends of justice. This is evidently clear when the successful party is unable to reap the fruits of his Judgment as happened in the matter of Ben Kakoma v The Attorney General ⁴⁴ in which the successful party never lived to see the delivery of the Ruling.

The issue at hand is whether in this day and age we can still condone and allow our justices to decide when they can deliver Judgments even when this delay goes beyond a year without a clear indication as to when the same will be delivered.

5.2 THE RULE RELATING TO ADJOURNMENTS

Other conclusions that can be drawn from this research clearly show that the men and women on the bench are not entirely to be blamed for the delays that have

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This paper has concluded that there is definite need for the High Court to strengthen its supervisory role over the Subordinate Courts. As already alluded to herein, there is an urgent need to seriously look into the problem faced by advocates who wait inordinately to be heard by magistrates. Matters commence as late as 12 noon despite the fact that there are now adequate court rooms at the

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Another conclusion that has been reached by this research pertains to the rules and practice currently prevailing in the legal conclusion that can be safely consigned to the dustbin for being outdated and for contributing to the laws legendary delays.

5.4 THE RULE RELATING TO APPEALS ON ASSESSMENT AND THE NON-AVAILABILITY OF AN INJUNCTION PENDING TRIAL FROM A SINGLE JUDGE OF THE SUPREME COURT.

Other rules relates to the practice relating to appeals. The first of such appeal is that Relating to appeals of assessment of damages from the Deputy Registrar lie to the Supreme Court instead of a High Court Judge in Chambers as is normally the case in other appeals from the Deputy Registrar. The decided cases of J.K Mporfu v Impregilo Recchi (Zambia) Ltd and Goodwin Mungandi ⁴⁷ and Ernst Karl Lembe v Kearney & Company ⁴⁸ aptly elucidate the finer points of this argument, suffice to say that this practice only leads to the delay in the quick resolution of matters as appeals to the Supreme Court are not resolved speedily as they would be in the High Court. The Supreme Court has a calender of specific dates on which they sit throughout the year. This simply entails that a simple appeal on assessment from the Deputy Registrar may take a couple of years to be concluded when a High Court Judge who normally hears all other appeals from the Deputy Registrar would have handled the same and decided the same in a shorter time period.

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instructive as to where these appeals lie, the same only serves to delay the ends of justice as a High Court Judge who is a superior Judicial Official than that of a Deputy Registrar is clearly equipped to deal with appeals emanating from the Deputy Registrar on assessments in the same way that the aforesaid High Court Judge determines all other appeals from the Deputy Registrar.

From the aforesaid it is clear that this selection of appeals that a High Court Judge is contradictory given that all other appeals from the Deputy Registrar lie to a High Court Judge in Chambers and the rule is thus in dire need for revision.

Similarly, there is the rule and practice relating to the granting of injunctions pending trial by the Supreme Court. Normally, a Single Judge of the Supreme Court is empowered to grant a stay of execution of a Judgment of the High Court pending the hearing and determination of the appeal. This power is clearly enshrined in Section 48 of the Supreme Court Act ⁵⁰. This position is however different in the event that a High Court Judge discharges an injunction in the High Court or refuses to grant one pending the determination of trial. The position is that a Single Judge CANNOT grant an injunction pending trial when the High Court Judge refuses one as such authority is vested in the FULL BENCH of the Supreme Court. The potentiality of meting out injustice to the citizenry is immense as the likelihood of securing a date before the FULL BENCH to hear a notice of motion against a refusal by a High Court Judge may take time to an extent that the purpose of the injunction is defeated. Essentially, a litigant is thereby subjected to unnecessary delays The lack of an immediate remedy by a

⁴⁹ High Court Act, Chapter 27 of the Laws of the Republic of Zambia
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litigant to maintain the status quo pending the hearing and determination of his/her matter by the trial court is clearly a violation of the rights of a citizen to the protection of his property and to have a free and fair trial. It is imperative that litigants are afforded the opportunity to access injunctive relief from the courts of law until a matter has been determined on the merits.

The denial to such a quick relief and the subjection of such a grant to the FULL BENCH merely serves to trample on the rights of the litigants and in essence entails that a matter pending for trial may be rendered nugatory and mere academic exercises.

RECOMMENDATION

5.6 From the foregoing, the following recommendations are mooted for the better delivery of justice so that the delays in the dispensation of justice can become a thing of the past:

First and foremost, there is an urgent and immediate need to amend the law so that Judges will be required to deliver Judgments within Six months from filing of submissions by counsels or indeed six months from the closure of trial. A Judge who fails to deliver a Judgment within the six months prescribed period should be subjected to sanctions including an order for mandamus to compel them to deliver the Judgments aforesaid. Persistent refusal or failure to deliver Judgments by a Judge should entail the setting up of a tribunal which should be empowered to

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remove a Judge from the bench for failure to carry out this duty. The necessary amendments to Article 20 (9) of the Constitution of Zambia ⁵⁷ to make it more explicit as the fact that a Judge will face removal from office for failure to deliver a Judgment within the prescribed time limit of six months.

Any Judicial officer found guilty of corrupt practices should face stiffer penalties than is normally applicable to what is applicable to the public and should lose all pension benefits that may have accrued to them.

The Rule relating to adjournments should be tightened so that the same is only allowed in rare circumstances such as dealing counsel appearing before a Higher Court and Counsel being indisposed. In both instances documentary proof should be a requirement so that the same is not abused by all and sundry. Counsel's who cause unnecessary adjournments due to being inadequately prepared be made to foot the costs of the adjournment and not their client and will be required to undertake a pro bono case for the under-privileged in society on behalf of the Law Association of Zambia.

The Rule relating to appeals on assessment of damages being heard by the Supreme Court be changed so that the same be heard by a High Court Judge in Chambers so that the same may be concluded quicker. This will also be in conformity with the other appeals from the Deputy Registrar which are dealt with by a High Court Judge In Chambers.

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Similarly, a single Judge of the Supreme Court should be allowed to grant an injunction pending trial to litigants so that appeals or indeed trials are not rendered nugatory and mere academic exercises. This will also the status quo to be maintained pending the full and final determination of trial. This will cushion parties that have had to wait inordinately for the grant of injunctive relief by the FULL BENCH and the subject matter ends up being disposed of before the conclusion of trial in the High Court.

The introduction of Jury trials in certain complex trials so as to assist the judge in arriving at the right decision. The Jury should be a modified version from that existing in the United Kingdom or the United States of America which normally sits twelve jurors and may instead have only five jurors. Specialised jury pools of say engineers, accountants, actuarians or doctors can be created to assist Judges in matters that they hold no expertise and from the same be able to arrive at decisions that are from an informed position.

Case records at all registries should have an electronic computer back up and every Judge should be availed the latest state of the art recoding facilities so that proceedings of the day can even be availed to counsel at the end of every day of trial. This will help speed up appeals which are normally delayed on account of proceedings from the Lower court which have not been deciphered. Annexed to this recommendation is the re-training of all support staff especially marshals and

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registry staff to make them more responsive the dynamics and needs of a modern society.

The period for exchange of pleadings be strictly adhered to so that matters may be set down for trial within the shortest possible time as in some instances matters are commenced but pleadings take inordinately long to conclude in clear violation of the time limits set for such exchange.

Lastly, to increase the number of puisne Judges of the High Court by a reasonable number between 5 to 8 so that the workload may be reduced on other Judges. Annexed to this, is the introduction of a Constitutional Court which will exclusively hear Presidential Petitions, Other Election petitions, matters falling within the realm of Constitutional and Administrative law so that the Supreme Court Calender is not disturbed every election year by Petitions which consign pending appeals to uncertain appeal dates.

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APPENDIX A

In order to procure a general perspective of the problem surrounding the late delivery of Judgments, this writer conducted three interviews with some stakeholders. The first interview conducted was with a Kabwe Magistrate Mr. Davies Chali Mumba to get his views on the subject⁵¹. Below are full extracts of the said interviews.

Question: Your Honour, I welcome you to this interview. I am currently writing my obligatory essay which is looking at the late delivery of Judgments by the Judiciary. The Kind of delivery being envisaged is the type that takes more than a year and in some cases 5 years to render. In your opinion what is the cause of these delays and what can be done to remedy the situation?

Answer: There are some many reasons why Judgments take inordinately long to deliver. However, I should caution you not to look at the same in a narrow sense as you should look at it from the time, say, when someone has been arrested. In my experience here in Kabwe an accused person is sometimes brought to court after two months. In addition some sessions do not take off on account of lack of transport. In such instances you can see why it can take five years to deliver a timely judgment.

Question: The delay I am talking about is the one where submissions from both parties have been rendered but the court is still unable to deliver a Judgment even after five years!

Answer: From personal experience I have not come across any matter that has taken that long to deliver, however speaking from my perspective there is a problem with what I would term rural stations such as the one I found myself in here in Kabwe. It is difficult to conduct meaningful research as there in no library available to assist us in the writing of our Judgments. This really, has been the major drawback in ensuring the smooth and timely delivery of Judgments by the Judiciary.

Question: Apart from the lack of a library what other factors are responsible for the late delivery of Judgments?

Answer: As earlier pointed out, these delays start from the time one is arrested, accused persons are brought late to court, witnesses are either unavailable on account of transport or because the defence or prosecution did not inform them, mainly on account of

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inadequate preparations for trial. Additionally, the lack of an efficient transport system has resulted in the failure by most accused persons appearing in court and this has translated into cases taking long to complete. This has been my experience here in Kabwe

APPENDIX B

The second interview conducted was with a Ugandan National, Mr. Wilbroad Osinde Wangwor who was a Minister of Legal Affairs during the time that the late Milton Obote was in power. He was later appointed as Chief Whip for the Ruling Party, a position he held until Obote was overthrown by by Idi Amin. He joined Obote in exile in Zambia and was appointed as Principal State Advocate in the DPPs Chambers, a position he held from 1990 – 1998. He is currently a consultant with Messrs Chifumu Banda and Associates⁵².

Question: Counsel, the late delivery of Judgments in some instances is quite worrying. In your experience, while you were the Legal Affairs Minister in Uganda?

Answer: During my time as Justice Minister, that was not really an issue. I think mainly out of principle and ethics, Judgments were relatively delivered in good time. I don't know the current position having been in Zambia for the last two decades but I should presume things have not changed much. The establishment of the Constitutional Court has also helped in alleviating the normal workload that would otherwise have been handled by the Supreme Court.

Question: In my obligatory essay, I am proposing for the enactment of a law that would require their Lordships to pass Judgment on or before 12 months from the filing of submissions by Advocates. In your view do you think that the same is feasible?

Answer: Your suggestion is a definite recipe for the erosion of the independence of the Judiciary. Judges should be left alone to deliver Judgments in their own time. Your idea would simply force Judges to render bad Judgments mainly to comply with the law and not because they put their mind to the formulation of the said Judgments. I agree that there are some bad eggs on the bench that portray a bad picture of the entire Judiciary. However, in my view it is better to have one bad egg and to spoil the entire bench with such a law.

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Question: In your view, you are basically saying the late delivery of Judgments is okay if done by a few on the bench and passing a deterrent law would be eroding their independence. What about the rights of litigants in ensuring that their matters are attended to without any undue and inordinate delay?

Answer: Passing such a law would be tantamount to intimidation and the Judiciary like I have already mentioned will only pass Judgments merely to fulfill and comply with the law. The inconvenience suffered by litigants is real and I understand their agony but I do not think such a law would help matters but merely erode the independence of the Judiciary especially the widely held belief that the justices should be left to pass their own independent Judgments without any interference from any quarter.

APPENDIX C

The last interview conducted by the writer was with a litigant in the matter of Solomon Mbewe and Others v Barclays Bank of Zambia Plc⁵³ whose Judgment is being awaited five years after counsels for both parties filed their submissions. Mr. George Nyangu is one of the several plaintiffs who took their former employee to court for the determination of their claims⁵⁴:

Question: What has been your personal experience with the Judiciary in regards to their efficiency in delivering timely Judgments?

Answer: Well, it has been a really bad experience given that this was the first time I have ever been associated with a court matter. When the matter was concluded by Chifumu Banda & Associates, the group was hopeful that Judgment would be passed shortly but alas it is now running into the sixth year and most of my colleagues have passed on. It is really painful when a meeting is called for updates among ourselves and each time there is news of a colleague who is no more. Over 100 of our colleagues from our group are no more and I don't know how many more have to die before we can see the light of our Judgments.

Question: What have your advocates told you as to why Judgment has taken so long?

Answer: It would seem that his Lordship is yet to deliver his Judgment but no reason has been advanced as to why it should take this long. Several letters have been written by the Managing Partner, State Counsel C.K Banda, SC Mr. M.N Ndhlovu, the late Mr. Prince Chisi and yourself but all

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