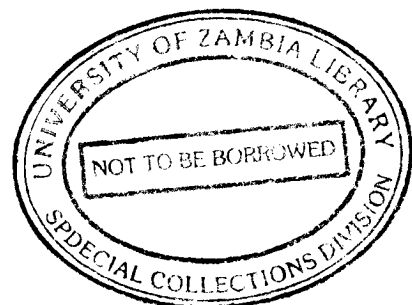
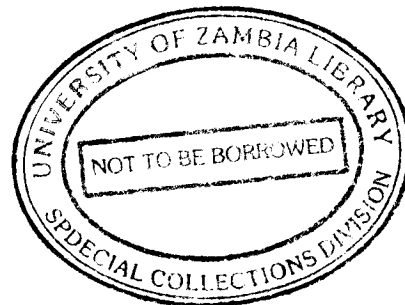


ENHANCING THE JUSTICE DELIVERY SYSTEM IN THE ZAMBIAN LOCAL COURTS



BY BENNY MBAO

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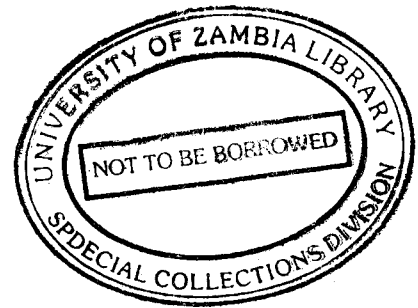
BY BENNY MBAO

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

I recommend that the Obligatory Essay prepared by Benny Mbaio entitled:

Enhancing the Justice delivery system in the Zambian Local Courts.

be accepted for examination. I have checked it and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing obligatory essays.



.....
Mrs Lillian Mushota
Supervisor

.....
Date

DEDICATION

To my beloved wife, Elaya Musamba Chilufya and my lovely children Mercy, Benny Jr and Emma.

You are the reason I went on. You were very patient and endured my absence as I struggled to complete my studies.

ACKNOWLEDGMENTS

First and foremost my gratitude goes to the Almighty God who made me go through this my University programme with strength, wisdom, endurance and sound health. This piece of work would not have been what it is in the absence of divine inspiration.

This work is an outcome of the involvement of a number of individuals / persons that I interacted with in my quest to complete this research programme.

At the outset, I offer my special thanks to my Learned Supervisor Mrs Lillian Mushota whose unwavering supervision and constructive criticism gave me direction so that I did not lose track of what I was to be doing to you madam, I am greatly indebted and will remain so as long as this work lasts. I thank you in lots.

I also convey my gratitude to Mr. Morris Kanyama the Acting Director of Local Court for the support he gave me verbally and also some material support in terms of literature. I greatly benefited from your inputs Sir.

To my parents Mr Geoffrey Palanga Jonadab Mbao and Mrs Tyness Mbao from when I can recall, you always wanted us to attend school and succeed. Production of this work is a testimony that your goals have been attained. Your words of Counsel gave me and still give me the impetus to go on.

To my sisters, Emma, Mbevia, Tasila, Lontia and Nukiwe and my brothers Mike, Palanga and Jacob, my cousins, nieces, nephews and my uncle Chapasuka Jonadab Mbao and Mrs Hildah Soko, your presence, comments and encouragement made me resilient in moments when I was about to tire on this long trek.

I would also like to thank and sincerely so Miss Antoinette Chabi for having carefully set up and typed my work. To Prokel Business Centre and Clifford Mutale Kafula a member of staff at the said Centre I say many thanks.

Furthermore, I convey my gratitude to the entire staff at the Supreme Court Library situate at the Judiciary Headquarters for their valuable contributions towards this piece of work.

To Magistrate colleagues Davies Chibwili, Phillip Banda, Wilfred Muma Kopa, the late Elliot Simposya I say you made life at varsity worthwhile. The encouragement we gave each other has come to fruition.

Lastly but not the least, to my late grandmother, Elina Lontia Mwanza, you showed me love in my infancy and this went on till your demise. May your soul rest in eternal peace.

PRELUDE

Amid the general concern relating to the justice delivery system in the Zambian Local Courts by the general public and legal practitioners in particular concerning the efficacy of this system, I have undertaken this research with an endeavor to high light the areas that are key and or have been key to this system of Justice.

The study is premised on bringing to the fore a description and analysis of how the local court system has operated from pre-colonial time to date. This research comprises four (4) chapter, which are as follows:

CHAPTER ONE

The chapter traces the historical background of the introduction of the Local Court System and looks at the Justice delivery system that existed if any at all existed before the introduction of the Local Court System.

CHAPTER TWO

This chapter deals with the general outline relating to the operations of the Local Court and the laws applicable in the Local Courts.

CHAPTER THREE

Deals with an empirical assessment on whether the system as was introduced is serving its intended purpose. A questionnaire was prepared and data was collected from some twenty within the city of Lusaka.

CHAPTER FOUR

Deals with the general observations over the operations in the Local Courts and recommendations on how the system can be improved upon.

LIST OF CONTENTS

1. Submission	
2. Dedication	
3. Acknowledgments	
4. Prelude	
5. Chapter One	1- 13
6. Chapter Two.....	14-28
7. Chapter Three.....	29- 38
8. Chapter Four	39-42

CHAPTER ONE

THE HISTORICAL BACKGROUND TO THE INTRODUCTION OF THE LOCAL COURT SYSTEM

In doing an in-depth analysis of the factors that historically precipitated the introduction of the Local Court System as a mode of justice delivery, a critical enquiry needs to be had into what existed as a system of justice delivery if at all any did exist prior to the introduction of the Local Courts.

The term justice has been defined by a number of Jurists and for the purpose of this paper I shall adopt the description as enunciated by Lord Hewart, Chief Justice in the case of Mc Carthy where he observed that:

“ (It is) of fundamental importance that Justice should not only be done, but should manifestly and undoubtedly be seen to be done”¹

In her article entitled Justice in the Post Newspaper of the 18th day of May 2005, Mrs Lillian Mushota, Lecturer in the School of Law, University of Zambia stated that:

“ Justice is the basic value underlying a system of law or the objective which that system seeks to attain. It is a virtue, which results in each individual receiving her or his due. It is impartial resolution of disputes arising from conflicting claims.”²

1. Mc Cathy 1924 1 KB 256
2. Post Newspaper 18th May, 2005

It appears from the above quotations that the agreed position is that Justice is the correct application of a law as opposed to arbitrariness.

It is important to tackle this essay with a full understanding that before the establishment of the Local Court System then referred to as the Native Courts, there existed some customary judicial processes within the various societies.

The processes had some restrictions, which were confined to the ethnic settings. The customary process recognized Arbitration as a mode of resolving issues / disputes.

Arbitration is defined as a procedure for the settlement of disputes under which parties agree to be bound by the decision of an Arbitrator, which is in general final and legally binding on both parties.

Arbitration is the only other dispute resolution method under which a decision can if necessary, be registered and enforced in the same way as a judgment of court of law. But the African customary law has not ascribed a meaning to the term Arbitration and so the usage of the process of Arbitration has not been made distinct as to whether it is according to:

- a) English Common Law and the Arbitration Act of 1889 where parties to a dispute agree at the outset to be bound by the award of the chosen Adjudicator (s) OR

- b) Is it one of the many African customary modes of referring a dispute to the Family head or an Elder of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of acceptance and from which either party is free to resile at any stage of the proceedings up to that point? ³

Zambia's Justice delivery system dates back to pre-colonial times, and like many other African Societies, " traditional mediation" always formed the basis of the indigenous dispute resolution modes. Paramount Chiefs, Senior Chiefs, Chiefs, Village Headmen, Village elders and indeed village Counselors all played varying roles in dispute in resolution of one form or the other in the pre – colonial territory called Zambia.

The debate will be put in three categories, which shall be:

- i. Pre – colonial period
- ii. Colonial period and
- iii. Post Independence period.

THE PRE – COLONIAL PERIOD

The dispensation of justice during this era was done through the village administration and what was administered was customary law of individual kingdoms or chiefdoms. Substantive justice was applied without necessarily following the formal legal rules and was obeyed due to the respect accorded to the kings and chiefs as it were.

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

Chief Justice Silungwe in his paper to a Law Association of Zambia seminar in 1990 outlined that the societies were bounded closely so usually by blood and or marriage or common decent, and the promotion and maintenance of harmony within the confines of society was very paramount. The traditional institutions of the extended family were crucial and played a significant role in resolution of differences, quarrels and disputes between community members. Peaceful co – existence was paramount and the judicial system was built around that objective. He further noted that:

“ The indigenous Judicial System was characterized by simple and informal procedures; compensation rather than punishment; peaceful reconciliation and mediation and, in some cases Arbitration. This was so due to the importance attached to the notion of setting disputes without the rupture of harmonious relationship or the creation of lifelong enmity. Significance was thus placed on the promotion and maintenance of harmonious relationships as a pragmatic means of engendering order, tranquility and social equilibrium in society,”⁴

Justice Silungwe showed that in the event of a conflict, parties were allowed an element of control in resolving their conflict, first among themselves, and where this failed a neutral third party, acceptable to disputants would be introduced. The third party would then attempt to break the impasse using a variety of techniques.

“ Such a person would then try to help the parties to arrive at their own solution without making recommendations to them. Alternatively, he would listen to the views of the parties and make recommendation, which the parties could or could not accept. In other circumstances, the neutral would receive evidence and thereafter impose a solution.”⁵

4. Silungwe J the first Judicial and Law Association of Zambia Seminar 1990

5. Ibid

It was therefore, the case in this era that a chief or headman, whose personal ability was acclaimed in the area of dispute resolution, could command respect and loyalty and ultimately acquired judicial prestige within society.

Upon successful settlement of a dispute, it was common that disputants were required to perform, publicly, some act of reconciliation or compensation such as a handshake or exchange white chickens as a demonstration of mutual goodwill and peace.

As a mode of imposing sanctions in Silungwe J's presentation he explained that:

"A recalcitrant or head strong disputant who publicly refused to accept the settlement did in fact run a risk of being ostracized by the society one lived in. The implementation of ostracism was implemented with fanaticism and thus disobedience was extremely rare in view of the sanction that was available⁶.

THE COLONIAL PERIOD.

The coming of the British South Africa Company (BSA Co.) saw the creation of a Court system which company officials viewed as the fundamental instrument of resolution of disputes, which was split into civil and criminal matters. What was introduced was a common law system but in a sense allowed customary law to persist only as regards indigenous parties. Indigenous Courts were therefore known as Native 'Courts' and those in urban areas were called Native Urban Courts'.

6. Ibid

It should be noted as was observed by Professor Muna Ndulo and John Hatchard that:

“ Prior to the arrival of white settlers, the indigenous population enforced customary laws through their own system of Courts. There was no clear distinction drawn between the Criminal and Civil Law as recognized by Common law.”⁷

As Silungwe Chief Justice further in his aforementioned paper noted, the “new” system brought into our land a new judicial phenomenon of winner in proceedings takes all and not the traditional system of ensuring the loser adjusts and looks up to some co – existence with the winning party.

In pre- independence era, which is the colonial period throughout most of the British rule, courts observed the doctrine of precedent inspite of the dual legal system that was applied. The dual legal system was that of received law that where basically meant for settlers and the other was that of African customary laws that applied to natives.

In his article entitled the **Evolution of the Zambian Courts** Earl L. Hoover observed that in attempting to introduce or rather implant a wholly new European legal system in alien land, the process was made difficult because of poor quality of legal training for all but a few high ranking Government figures and the need to

7. Ndulo & Hatchard (1994) Readings in Criminology in Zambia, London, James Curry p1.

focus the limited resources on matters considered more important to the Colonial Administration than legal development. This was so because the core business of the BSA Company was mineral exploration and actual mining. *

In view of what is aforesaid, the Colonial Officials largely ignored the local customary laws and thus English law was applied literally without consideration for local conditions even for those affecting European Settlers.

In cases dealing with the uniquely local concepts of witchcraft the Courts insisted on referring to current laws and standards of England as where seen in the following cases:

In A.G. vs Jackson (1957) R& N p443

The Respondent an African man believing that his life was in imminent peril as the result of a spell cast, or about to be cast upon him by the deceased, an elderly female, killed her in the belief that by so doing he could save his life. He was charged in the High Court of Nyasaland with murder of the deceased but was acquitted on the grounds that, as he killed the deceased in the reasonable belief that his life was in peril as the result of her practicing witchcraft against him, the killing was a self – defence and constituted excusable homicide. The Attorney General appealed on a number of grounds.

*Muna Ndulo (first edition) Law in Zambia (1984) East African Publishing House.

The Federal Supreme Court amongst its holdings on the subject of whether a belief in witchcraft can be a reasonable belief in law pointed out as follows:-

TREDGOLD C.J.

That the test of reasonableness of the belief is the English common law objective test of what the man in the street in England would consider reasonable, the test is identical in Nyasaland. Applying that test, it was impossible to hold that the belief in the efficacy of witchcraft was a reasonable belief, which the law would recognize as the basis of a defence of justifiable homicide.

In addition **LEWEY (Federal Judge)** sitting in the same matter held that:

- Applying objectively the test of the ordinary reasonable man, the accused's belief that he was about to die by witchcraft, however genuinely entertained by him, could never be in law, a reasonable; belief.
- That a threat of witchcraft could never constitute a physical threat.

The Appeal by Attorney General was allowed.

In RV Luka Matengula and Three Others (1951) 5NRLR p148

The four prisoners were charged with murder contrary to Section 177 of the Penal Code. It was alleged that whilst carrying a coffin containing the dead body of one Chichibanda at a native mourning ceremony they indulged in the Lamba tribal custom of "pointing out" the person responsible for the death of Chichibanda and so struck an elderly woman Mayamba Lusika by ramming her with the coffin, thus inflicting injuries from which she died. **Justice Evans** held

that there was no case to answer on the charge of murder. The evidence failed to show that the prisoners intended to kill or cause grievous bodily harm to the deceased, or that they knew the bumps from the coffin would probably result in the deceased's death.

The accused, however must answer for unlawfully causing death of the woman and the belief of unnatural force or witchcraft in answer to this was no defence.

Amongst Africans the belief is that witchcraft is real and not a mere concept. This belief is one that is notorious in nature amongst most African Society (both literate and illiterate).

Therefore, the Courts set up during the colonial era with an exception of native courts were bound by decisions of higher English Courts. English decisions were followed with exactness even when strange results were produced such as the holdings in the two cases cited above. Substantive and procedural rules of England were applied to the colonies with almost no deviation at all.

POST INDEPENDENCE ERA

Following the attainment of Independence by Zambia on 24th day of October 1964 significant strides were taken in the development of the Post – Independence judicial system. Key amongst them were:

a) the establishment and enshrining of the Independence of the Judiciary in the Independence Constitution under Article 105 Subsection (3) which provided for the creation of Judicial Offices as follows:

The offices to which this Article applies are:

- a. This office of Master or Deputy Master or Assistant Master of the Supreme Court.
- b. The office of Registrar or Deputy Registrar or Assistant Registrar of the High Court.
- c. The office of Senior Resident Magistrate, Resident Magistrate or Magistrate.
- d. The office of Presiding Officer or member of any Subordinate Court; or
- e. Such other offices of Presiding Officer or member of any Court of law or connected with any Court of Law as may be prescribed by or under an Act of Parliament.

(4) In this Article references to the office of Magistrate do not include references to any Administrative Office.....⁸

b) The newly acquired freedom of movement was enshrined in the Independence Constitution under Article 24 (1) which provided that:

“ No person shall be deprived of his freedom of movement, and for the purposes of this Article the said freedom means the right to move freely throughout Zambia, the right to reside in any part of Zambia the right to enter Zambia and immunity from expulsion from Zambia”⁹

8. The 1964 Constitution of Zambia

9. Ibid

This allowed unimpeded movement of rural population to urban areas in search of "Greener Pastures". Before Independence, movement especially of the indigenous people was highly restricted. This rural urban drift led to a necessity of promoting the traditional means of settling disputes. This massive drift from the rural areas into the urban areas, coupled with some enhanced literacy the Zambian society became fragmented and was like a matrix.

The traditional institutions of the extended family which had played a significant part in the harmonious resolution of disputes had disintegrated and evidently did not retain the importance it commanded in the years before.

Silungwe J observed that:

" Increased urbanization, broadening Government involvement in everyday life, and a waning of non – judicial institutions traditionally engaged in dispute resolution has combined to produce an unprecedented explosion of formal litigation. " ¹⁰

At independence, Zambia inherited the dual legal system that comprised the Native Courts administering mainly customary law and the Native Commissioner's Courts which administered statute law and Orders – in – Council.

10. Silungwe J. the first Judicial and Law Association of Zambia Seminar

Amongst the Native Courts there was a difference between the Native Courts in Barotseland (now Western province) and those in the other provinces. This distinction arose from the status of Barotseland as a protectorate whereas the rest of Northern Rhodesia was a colony. As a Protectorate Barotseland had its own court system known as the Kuta and the Colonial Government did not interfere with the operations of the traditional court system. Compared to a colony, the Barotseland enjoyed some form of autonomy in the governance of its affairs.

In the Barotseland, the North – Western Rhodesia Order in Council of 1899 led to the establishment of a more elaborate judicial system in the territory. Section 3 of the Order in Council defined the territory to which the Order pertained. A provision was made for the appointment of Judges and Magistrates.

English law was to apply except where otherwise stated in the Order and the High Commissioner was empowered to issue proclamations, as he found necessary to maintain order in the territory. Article 9 of the Order retained a limited degree of protection for customary laws.

In performance of its functions, the Native Courts were required to observe customary law only so far as it was not repugnant to natural justice or morality. The case of *Kaniki vs Jairus* (1967) brought out the position of the law to be adopted. The case shall be discussed in detail in the second chapter.

There were also Native Commissioners who had powers of Magistrates under the Magistrate Court Ordinance in civil and criminal matters. Their jurisdiction in practice was more confined to civil matters. It is noteworthy here to state that Native Commissioners were by appointment Administrators.

Thus, it can be firmly argued against the many issues raised under this chapter that in fact there existed a system of justice delivery way back before the introduction of the Local Court system in modern day Zambia.

CHAPTER TWO

GENERAL OUTLINE RELATING TO THE OPERATIONS OF THE LOCAL COURT

According to Dicey's Doctrine of rule of law, the phrase denotes two things and these are:

(a) **Freedom under the law.**

No person may be put in prison or have his property taken away from him/her or be punished in any other way, unless he/she has been proved by a properly established court of law, to have broken one of the recognized laws of the nation.

(b) **Equality under the law.**

No person is above the law. Therefore, every person may be taken to court, and he/she shall not hide behind official position, political power, or wealth to escape from court cases.

The local courts under the current system administer customary law as is provided for under section 12(1) (a) of the Local Courts Act Cap 29. Any claim, dispute or charge arising out of a Statutory Marriage must be sent to the High Court as a Local Court may not hear such a claim. Statutory law is also administered by the local courts pursuant to section 13 of the Local Court Act Cap 29. The traditional rulers no longer preside over matters in the local courts as they have been replaced by the Local Court Justices. These Local Court

Justices do not receive any formal training either in customary law or in statutory law.

The local courts are the lowest courts in Zambia. This is pursuant to Article 91(1) of the Constitution and it provides that:

The judicature of the Republic shall consist of:

- (i) the Supreme Court of Zambia
- (ii) the High Court of Zambia
- (iii) the Industrial Relations Court
- (iv) the Subordinate Courts
- (v) the Local Courts and
- (vi) such lower courts as may be prescribed by an Act of parliament.

The hierarchy of the local court is two fold as it has the administrative structure on one hand and the judicature structure on the other hand.

The administrative structure comprises the Director of Local Courts the Deputy Director, the local Courts Officers, the Local Court Registrar, the Court Clerks, and Messengers whereas the judicature structure comprises the Principal Presiding Justice, Senior Presiding Justice, Presiding Justice and the Local Court Justice. A person therefore cannot be promoted from one structure to the other e.g. a Court Clerk cannot be promoted to be a Local Court Justice.

The Local Courts are further divided into Grade 'A' and Grade 'B' Courts. The criteria for the classification is that a Grade 'A' Court hears a minimum of four hundred cases per annum while the Grade 'B' hears only up to a maximum of three hundred and ninety nine cases per annum. If however, a particular grade 'B' Court starts hearing more than four hundred cases annually as may be detected from its returns its status will then be upgraded to that of a Grade 'A' Court.

As a result of this type of classification, most of the Grade 'A' Courts are found in the Urban areas where the population is larger than in rural areas. The structures or hierarchy of the Local Courts is as follows: -

ADMINISTRATION	JUDICATURE
<ul style="list-style-type: none"> - The Director of Local Courts - Deputy Director - Provincial Local Courts Officer - District Local Court Officer - Court Registrar - Court Clerks - Court Messengers 	<p><u>Grade A</u></p> <ul style="list-style-type: none"> - Principal Presiding Justice - Senior Presiding Justice - Senior Court Justice <p><u>Grade B</u></p> <ul style="list-style-type: none"> - Presiding Justice - Local Court Justice

ESTABLISHMENT OF LOCAL COURTS

The establishment and recognition of the Local Court is done by the Minister pursuant to Section 4 (1) of the Local Court Act, which provides:

“ The Minister may, by Court warrant under his hand, recognize or establish such Local Courts as he shall think fit, and any such Court shall exercise such jurisdiction as may be conferred by or under the provisions of this Act within such territorial limits as may be defined by such warrant.”

Section 4 (3) provides that:

“ The Minister may at any time suspend or cancel any Court and upon such cancellation, may issue a new Court Warrant in respect of the Local court concerned.”

Section 6 (1) of the Act provides that:

“ A Local Court shall consist of a Presiding Justice either sitting alone with such number of other members as may be prescribed by the Minister in the Court Warrant.”

Whilst Section 6 (5) states that:

“ The Minister may, by statutory notice, delegate, to the Director the powers conferred upon him by Subsection (1) “

APPOINTMENT OF LOCAL COURT JUSTICES

The Local Court Justices are appointed by the Judicial Service Commission for a period of three years, which is renewable. The procedure for recommending suitable candidates differs depending on whether one is to be appointed as a Local Court Justice in a local court in an urban area or in the rural area. When a vacancy falls in an Urban court, the Local Court Officer advertises the vacancy and suitable candidates are selected and interviewed. The names of the three successful candidates are then sent to the Provincial Local Courts Officer who in turn submits the names to the Judicial Service Commission for appointment of one of the candidates as a Court Justice.

In rural areas, however, the method of appointment is different. When there is a vacancy in a rural local court, the local court Officer writes a letter to the area Chief requesting the Chief to submit at least three names of suitable candidates to fill in the vacant position. The Chief then recommends from amongst his subjects the three candidates and sends the name of the selected candidate to the Judicial Service Commission for appointment. However, if the names are not suitable the Local Court Officer writes back to the Chief requesting the Chief to propose other names.

The rationale for allowing Chiefs to propose candidates from their areas to the position of Local Court Justice was that the Chiefs are better placed to know who from among their subjects is the best candidate to be a Local Court Justice. Comments from most of the Local Court Justice interviewed are against this

system and would rather have the same method used in urban areas applied in the rural areas too. The argument raised are that most Chiefs are not objective in making these proposals and in many instances Chiefs have been accused of proposing names of either their relatives or friends.

CONTEMPT OF COURT.

Matters of contempt of court in the local courts are provided for in section 47 of the local court Act and may include the following:

- (a) Threatening or insulting a Justice or Assessor
- (b) Interrupting court proceedings
- (c) Failing to deliver something to the court if ordered to do so.
- (d) Refusing to give evidence when asked by the court to do so, unless he is protected or privileged in some way.
- (e) While a case is being heard in court, or before the case is heard but after the complaint or claim has been made to the Court (while the matter is "sub-judice") discussing or writing about the case in such a way as to misrepresent or pre-judge either the parties to the case or the case itself or the Court proceedings e.g. if shortly before a case was to be heard in Court, a newspaper published an article including the words.
- (f) Refusing to sign a document, which the Court may legally order him to sign.
- (g) Failure to pay compensation when ordered to do so by the Court, if he has the money to pay or can find the money but willful fails to do so.

(h) Disobeying any lawful order of the court.

A case of contempt of Court can be heard either by the Court in respect of which the contempt was committed or by any other Court of competent jurisdiction (for instance an appeal / Court)

INSPECTION AND REVISION

Section 54 of the Local Court Act relates to powers of inspection and revision vested in the authorized officers. The authorized officers include the Director of Local Courts, Deputy Director of Local Courts, Local Court Officers, Principal Resident Magistrates, Senior Resident Magistrate, Resident Magistrates and such other Magistrates designated by the Chief Justice. Such Officers have the powers to quash any proceedings or sentence, order fresh hearing pass another sentence or, order different compensation. In practice, the Provincial or District Local Court Officers carry out reviews or inspections of court records.

Much as the provision in the Local Courts Act relating to review is appreciated since it forms one of the methods of supervising the Court Justices, it is worth noting that Officers perform this function without legal training. From the hierarchy of the Local Courts, it is evident that the Local Court Officers are essentially administrators and do not possess the requisite training to perform judicial functions.

RECORD MAKING AND KEEPING

The recording of evidence in the Local Court is actually done by the Court Clerk and this is soon as a party to a case starts giving evidence. The Court Clerk writes down as much as possible what the witness says. The general rule is that evidence must be written down in exactly the same way as it was said in Court. The Justices do not write down evidence for purposes of it forming the Court's record of proceedings but the notes taken are made use of in arriving at their verdicts.

At the conclusion of the matter, each Justice signs the case record certifying that it is an accurate and full record of the case. If a Justice cannot understand the English in which the record is written, the Clerk must translate it to him. The same rule applies, of course to all documents e.g. warrant of arrest, which must be signed by the Justices. The Court Clerk on the other hand signs the case record to show that it was he who wrote the case record and is responsible for the accuracy of the record. If his signature is illegible he must print his names in block letters underneath it.

At the conclusion of a case, the parties to a case may be given a Certificate of Judgment, which is a copy of the verdict and order (or sentence of the Court). It is prescribed Local Court Form No. 12.

On this document there is no need to include reasons of the Court for its Judgment. There is no fee that is charged for its issuance to the parties. Copies

of case records are issued to parties on the payment of the prescribed fee. This is also the practice in the practice in the Magistrates Courts. Members of the public have no right to see Court records, except where they are parties to a case. However, the following people may be allowed to see Court records without special permission from the Registrar of the High Court. The Local Court Act Cap 29 Section 16 (I) makes these restrictions.

- a) All authorized officers and members of staff if ordered to inspect Court records
- b) High Court staff whose duty it is to inspect court records.
- c) Justices and Magistrates of other courts to which the case has gone by way of transfer or appear.
- d) Justices of the court to which the record belongs, and the staff of the same court.

Members of the press are not allowed to see the case record but in order to ensure that the case is accurately reported, the Registrar or Clerk may after obtaining permission to do so from the Supervising Officer, assist the Reporter by answering his questions about the case. Only the legality should be discussed thus the Registrar or Clerk is not supposed render their opinion about the case.

No member of staff of the Local Court (inclusive) of Justices may be interviewed by the press on any subject connected with his Court work, unless written permission has been obtained in advance from the Registrar of the High Court.

Touching on the disposal of old records, all records of more than two years may reasonably be considered as "dead" and thus unlikely to be required at the Court any longer. At the beginning of the year (or whenever convenient and authorized by the Provincial Local Courts Officer) all case records for years earlier than two preceding years are sent to the National Archives (of Zambia).

The local courts cater for the majority of the Zambian population. This is because the local courts are easily accessible by the people the law that is applied in these courts is understood by the majority of the people.

It is cheap to commence an action in the local court and there is no language barrier as the Local Courts use local languages. The very fact that the local courts cater for the majority of the Zambian population makes it necessary should changes aimed at the improvement of this system be desired to be a cardinal area for such improvement.

A GRADE "A" COURT can:

- ii. Hear a Civil case about a claim of not more than K 15,000.00 in compensation.
- iii. Fine a convicted person not more than K 2,000.00.
- iv. Send a convicted person to prison for not more than 24 (twenty-four months)

A GRADE "B" COURT can:

- i. Hear a civil case about a claim of not more than K 12,000.00 and award up to K 12,000.00 in compensation.

- ii. Fine a convicted person not more than eighteen months.
- iii. Send a convicted person to prison for not more than 18(eighteen months).

The grade of the court is shown on its court warrant.

JURISDICTION OVER PERSONS

A person may appear in local court as a Plaintiff, Defendant, Complainant, Accused or Witness. This is so if a person has contravened any of the laws applicable in the local courts.

A Warrant is an order by a court, telling the person to whom it is addressed to do something (to arrest someone, for example) and giving him authority to do it.

Local Courts are not allowed to hear cases which involve accusations that death has been caused by the accused person nor may the court hear cases which are punishable by death such as Murder, Treason etc. This is provided for under section 11 of the Local Court Act, Cap 29

CONSENT TO JUDGMENT

An Official Form called " Notice and Form for Consent Judgment " is available for use by Local Court. This form may be sent out with a civil summons, it tells the Defendant that if he agrees with what ever is being claimed against him, he need not appear before the issuing court. Judgment will be given in his absence provided that he signs and returns the Consent to Judgment Form. This is useful

if the Defendant knows that he will lose his case and if he lives far from the court house and does not want the trouble and expense of traveling to it.

Although the law allows Local Courts to accept bail deposits, (that is money or property left at the Court house as a guarantee that the bailed person will return) under Section 24 (2) of the Local Court Act, Cap 29, this practice is strictly forbidden as there is no suitable method of accounting for such bail deposits which of ten have to be paid back to the person released on bail. All Court Clerks are strictly forbidden to make any such repayments from the money in their cash boxes. The Administrative rule is therefore any Local Court for the release of a person charged may accept no bail deposits.

The issue of repugnancy forms a key aspect in the study of Customary law vis-à-vis received law. Conflicts between customary law and imposed laws from the United Kingdom were inevitable owing to the manner in which the two laws operated. One such clash was when Europeans and Africans were involved in the same suit. In such cases, Customary law was held to be applicable exclusively involved.

Section 12 of the Local Court Act, Cap 29 deals with repugnancy. Customary law were only ousted to the extent that they were inconsistent with local legislation or contrary to natural justice, equity and good conscience.

Furthermore, the High Courts for Zambia dealt with the issues touching on repugnancy in the case of:

KANIKI vs JAIRUS (1967) SJZ p 92 – 95

The case concerns Lala customary law- in particular a custom known as “Akamutwe” which apparently exists in various forms amongst a number of tribes in Zambia. It related to certain consequences, which ensue upon the death of a spouse – in particular, to the payment of compensation by relatives of the surviving spouse to relatives of the deceased spouse, it would seem that such payments are made either upon a concept of the responsibility of the surviving spouse for the deceased spouse death or as a means of purifying or releasing the spouse from the deceased spouse’s spirit so that the surviving spouse is free to marry again.

In the instance case, it was the husband who died. It seems to have been accepted by the parties that compensation was properly payable, but they could not agree as to quantum, and the matter came before the Shaibila Native Court where the Respondent Jairus suing on behalf of the relatives of the dead husband, obtained judgment against the Appellant Beluti Kaniki, the brother of the widow, for the payment of 12 pounds damages and 1 pound of hearing. Beluti Kaniki appealed against this decision on the grounds that the compensation awarded was too high. Both under the Native Courts ordinance Cap 158, which was in force when the case was heard by the Shaibila Native Court and under the Local Courts Act, 1966 which was in force when the appeal was

heard, it was incumbent on the Court of first instance to administer the customary law applicable to the matter before it, but only so far as such law was “ not repugnant to natural justice or incompatible with the provisions of any written law”.

The Subordinate Court in hearing the appeal came to a conclusion that the custom was repugnant to natural justice and was therefore unenforceable. The High Court held on appeal that;

The Local Courts also administer such written law as may be conferred upon them by the Minister as well as the by – laws and regulations made under the provisions of the Local Government Act and in force in the area of jurisdiction of such Court .The litigants are not expected to be represented by a Lawyer.

In Zambia today, there exist Traditional Courts which operate pursuant to the proviso in Section 50 (1) of the Local Courts Act which provides: -

“provided that nothing in this subsection shall be deemed to prohibit any African Customary arbitration or settlement of any matter with the consent of the parties thereto if such arbitration or settlement is conducted in a manner recognized by the appropriate African customary law.

African customary law; Traditional courts are infact recognized as institutions within the traditional systems of Zambia. These are known better by people in the

rural areas than the local courts. The Traditional courts offer increased access to the citizens and they are more reconciliatory and friendlier than the local courts because these Courts employ a system of justice that is as observed by Silungwe J's is characterized by simple, and informal procedures. Compensation is preferred rather than punishment. The traditional Courts encourage peaceful reconciliation and mediation and in some instances Arbitration. Most traditional Rulers do not know under what authority they operate. These courts are known by different names in different parts of the country. Some of the names are shown below.

PROVINCE	NAME GIVEN TO THE TRADITIONAL COURT
North – Western	Nzangu- Lunda
Northern	Insaka
Western	Kuta
Eastern	Madando – Tumbuka Ngoni
	Mwambo – Nsenga Mphala - Chewa
Southern	Katengo
	Nkuta

This outline has been given in an attempt to accord the litigants in the Local Courts and the would be litigants an opportunity to know how operations are carried out in the Local Courts.

CHAPTER THREE

IS THE LOCAL COURT SYSTEM OF JUSTICE STILL SERVING ITS INTENDED PURPOSE

In an attempt to carry out a post – mortem on whether the local court system of justice is serving the purpose for which it was made part of the system of justice in modern Zambia; to administer justice, it has been considered that an empirical assessment of the system needed to be conducted and to that effect a questionnaire was prepared and data was collected from 20 Respondents from within the City of Lusaka, the design of the questionnaire is as shown below.

1. Forenames (s)
2. Surname.....
3. Residential Address.....
.....
4. Postal Address.....
5. Occupation
6. City, Town, District.....
7. Have you ever appeared before the Local Court?.....
8. If the answer above is YES
 - i. In which District did you make an appearance.....
 - ii. What was the Cause of Action being litigated?.....
.....
.....
 - iii. What was /is your view of the outcome?
9. Has any relation / family member appeared before a Local Court?.....
.....
10. What was / is your view of the outcome?.....
.....
.....
.....

11. Does the Local Court system need to be reviewed ?.....

.....
.....
.....
.....
.....

12. If Yes give reasons.....

.....

13. How is the disposal of matters compared to other Courts?

- i. Speed.....
- ii. Fairness.....
- iii. Enforceability.....
- iv. Other.....

14. Should Lawyers represent people (disputants)in Local Courts

.....

15. If the answer above is YES advise why.....

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16. Would you recommend scrapping of the Local Courts from the Justice system in Zambia?.....

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.....
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17. Give reasons for your answer.....
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.....

Following the circulation of the questionnaire, an analysis and a summary of the responses got from the 20 Respondents is given in the matrix that follows.

Respondent No.	Nature of case of action for which you/relation made an appearance for	Verdict	Views over the verdict rate of disposal quality of the outcome	Problems observed if any	Is there any need for reforming the system	General comments and recommendations
1	None	-	Matters are generally disposed off faster than other courts	There is no clear cut procedure followed	Yes short courses should be organized for Local Court Justices and an up to date handbook should be prepared for their use	Infrastructure of the courts should be changed. Funding should be improved upon. Conditions of service should be improved.
2	Elopement	I was fined	It was unfair	Procedure is very bad. Local courts normally favour female plaintiffs in matters such as elopement or pregnancy. Decisions are not fairly given	Yes seminars, workshop should be arranged for the Court Justices.	The Justices must be closely supervised. The manner of delivery of judgments must be improved on. Lawyers must be given audience to be representing the poor litigants Local Court Justices must be trained
3	-	-	-	-	-	-
4	-	-	-	Infrastructure is not friendly to the users of the court. Rule of law is not followed.	Yes, the Justices must be trained and there must be a process of re-training.	The whole system must be revisited. Infrastructure should be improved. Justices must be recruited only upon successful completion of some training tailored for use in local court
5	Marriage interference	Claim granted	Decision was fair	Cases handled by the local courts are limited. Jurisdiction should be increased	Yes, the justice must undergo training	
6	Marriage interference	Claim dismissed	Defendant was favoured by the court.	Justice appear like they are not trained and this is clear in remote parts	Yes local court personnel must be trained	There is no security at the local courts for justices.

7	-	-	-	-	-	Yes, the poor citizens must be attended to in the same manner as the rich citizens	Local courts must exercise equality before the law	in the same locality as the people the adjudicate over.
8	-	-	There are too many adjournments in the local courts. Procedure is not followed in the local court if at all it is there	-	-	-	There is too much work and so the Justices may be losing concentration due to the excess work. Training of local court personnel	
9	Pregnancy	Claim was dismissed.	It was fair and the case was concluded in two sessions	Lack of consistence on the part of the Justices	Yes, so that the local courts get decongested.	Yes, so that the local courts get decongested.	More courts should be built and more Local Court Justices employed	More courts should be built and more Local Court Justices employed
10	Employment	Fined K600,000.	It was fairly handled	Too many adjournments. Lack of man- power against so much work	Yes so that it can better provide for the citizens	Yes so that it can better provide for the citizens	Members of staff lack motivation.	Members of staff lack motivation.
11	-	-	-	Justices do not have knowledge on matters of confidentiality	Yes, by giving the members of staff more knowledge	Yes, by giving the members of staff more knowledge	The local courts are a necessary part of our society and so they should remain but be improved upon so that they are respected by members or the community	The local courts are a necessary part of our society and so they should remain but be improved upon so that they are respected by members or the community
12	Divorce	It was granted	Not fairly handled over property distribution	Lacks system of counselling as a way of setting disputes	Yes	Yes	Enhance training for the employs	Enhance training for the employs
13	-	-	-	-	Yes-improve funding to the local courts	Yes-improve funding to the local courts	More court-rooms should be built. Provide more stationery and man	More court-rooms should be built. Provide more stationery and man

14	-	-	-	-	There are delays in disposing off of matters	Yes	Court staff should be motivated by increasing salaries so that they do not easily get corrupted.
15	Defamation of character	Claim granted	Faster than the Magistrates courts	-	-	Yes	System must be overhauled in a way that it helps in decongesting the subordinate court.
16	-	-	-	-	-	Yes	Customary law should be properly documented
17	Contempt of court	Made to sit on the floor in open court	Not fair as I was given no chance to explain	-	-	Yes	There is need to increase jurisdiction of the local courts
18	-	Not delivered as plaintiff died before the conclusion of the case	-	Clerks instead of the Justices are the ones who record evidence	Yes	Yes	High stands should be set up so that the Justices cannot easily be corrupted by litigants
19	Divorce	Divorce was granted	Fair and speedily done	It is very easy for Justices to get compromised	Yes	Yes	Training of Justices must form the key feature of the operations at the local court
20	Divorce	Divorce was granted	Speedily done. Not fair as property acquired during marriage was not shared \devolved between the parties to the dissolved marriage.	-	Yes	Yes	The local courts do not delay disposing of matters compared to other courts in the Judicial hierarchy in Zambia.

IMPORTANT EMERGENT ISSUES

From the analysis of the data collected from the Respondents the following issues emerged as paramount in the observations, comments and recommendations that were submitted.

TRAINING

It is the general view of the Respondents that Court Justices need training in law; in general and customary laws in particular so that they are well versed in decision-making. Further, it was recommended that the Courts Justices be subjected to workshops, seminars and other refresher training programmes as will be found necessary.

It was in addition noted that an institution or a school ought to be set up so that it would have the mandate of training Court Justices on how to conduct sessions, set up procedure which was noted to be non – existent.

INFRASTRUCTURE

There is very bad infrastructure as the court structures are extremely dilapidated. In some cases there are no courtrooms at all and improvisation is done. For instance, Chilenje Local Court and Chelstone Local Court use the community Council Halls built by Lusaka City Council. As a result of this situation record keeping is extremely poor as court records are kept in open rooms that are not even secured. There are reports of Courts sitting under trees in rural Zambia. This is so at Maguya and Misholo Local Courts in the Eastern Province. In

Nyimba District of the Eastern Province, the District Council Tarven is used as a Courtroom.

The importance of infrastructure in efficient justice delivery cannot be over emphasized as in places where court sessions are held say under a tree or in buildings that are dilapidated weather conditions may slow down the rate of disposal of matters. This is so because in certain instances court sessions may not be held for example when it is raining because of a leaking roof. Neither can sessions held under a tree take place when it is raining nor in very cold winter.

For good delivery of justice to take effect, proper and well situate infrastructure must be used. This is the reason why most of the Respondents have proposed improvements to the infrastructure by renovating old buildings and building more courtrooms to cater for the ever-increasing population in the country.

TRANSPORT

Other than vehicles given to the Provincial Officers, the rest of the areas of operations have not been given any transport. Local Court Justices walk to and from their work places in instances where they are staying in distant places from the Court buildings. Court messengers therefore have to cover long distances walking or using their own bicycles to deliver summons or messages. Court Clerks cover long distances to go and deposit court fees a situation, which poses a security risk. It was also learnt that even when court records are needed for

purposes of inspection by the Local Courts Officer, they are delivered either on foot or by a bicycle and in some instances by public transport.

If transport is provided for to the Local Courts by the Administration, delays and other problems of service of summons and other court documents would be eased up. It is on the aspect of speed that the component of transport would ultimately positively contribute

DECENTRALISATION OF FINANCES

There is inadequate funding by the state to the Local Courts as funding is centralized. Most court staff are of the view that instead of sending all monies collected to the Headquarters of the Judiciary before it can be disbursed to provinces and subsequently to the Districts, the courts be allowed to retain part of the fees they collect for buying of stationery and other logistics needed for the smooth operation of the Courts.

UNIFORMS

Local Court Messengers operate without uniforms and wear civilian clothes and this makes identification of court staff difficult. The Court Messengers have no handcuffs. This lack of uniforms extends to Court Justices who operate in Courtrooms without robes as required by their guidelines.

SALARIES

It was revealed that the salaries of the Court Justices and support staff are low and this tends to expose the Local Court staff to corruption by litigants whose intention is to interfere with the course of Justice.

Thus, it can be noted that from interviews carried out and the responses elicited from the questionnaire it needs no over emphasis that the Local Court is still a necessary component of the justice system in the country and what needs to be done are improvements in the areas highlighted.

CHAPTER FOUR

GENERAL OBSERVATIONS OVER OPERATIONS IN THE LOCAL COURTS RECOMMENDATIONS ON HOW THE SYSTEM CAN BE IMPROVED UPON

ADVANTAGES OF THE LOCAL COURTS

This Court system has been noted to be more user friendly when compared to other systems of the courts in Zambia judicial system. The following are some of the advantages that have been observed:

- (a) The Court system applies a body of laws, which have deep roots in the traditional society and culture but have been modified particularly in the direction of regular organization and procedure over the years from colonial administration.
- (b) They cater for the majority of the Zambian population as they are easily accessible, and they are found in both rural and urban Zambia.
- (c) The majority of the litigants easily understand the laws applied, as they are familiar.
- (d) There is no language barrier to litigants as the proceedings are done in local languages, which often are familiar to the majority of Zambians.
- (e) The law applied in these Courts has earned some deep respect from the people in the locality where it is practiced as it has been passed down from one generation to another and by word of mouth.
- (f) The law applied being unwritten is flexible and not rigid as written law. It is based on reconciliation as a mode of dispute resolution – customary arbitration.

(g) Disposal of matters in the local courts is faster when compared to the other courts in the land.

DISADVANTAGES

- (a) The law applied differs radically from tribe to tribe and even from time to time within a given area as Leaders change.
- (b) The law applied being unwritten is imprecise in nature.
- (c) The law may be ambiguous and resolution of the interpretation to follow is much dependent on prestige and power of the leaders making the interpretation of customary law being left in the hands of people knowledgeable in a given tradition, custom or culture known as Assessors.
- (d) The customary law cannot be codified, as the judicial structure may not cope with this scenario. For urban areas due to high urbanization men from different tribes e.g. on the Copperbelt and Lusaka Province have settled in one area and thus unfamiliar customs are imposed on these men when they appeared before court. It would be difficult to codify customs, which are in essence cosmopolitan. Attempts to have the customs of the 72 tribes codified have proven excessively difficult amidst the high rate of inter- marriages between Zambian tribes and also with other races and earlier referred to rural urban drift.

RECOMMENDATIONS

Having done this in depth enquiry of the establishment of the Local Court system of justice from the colonial era to present day Zambia, the recommendations that were made by the 20 Respondents in the preceding chapter are adopted wholly.

Additionally from the chats had with some stakeholders who included judiciary members of staff and in particular the Local Court staff, the following issues were brought out as a way of improving the operations in the local court system of justice.

- (a) That the Traditional Courts be courts of first instances as they have a large contact with their appeals going to the Local Court with some statutory provision being put in place to acknowledge the traditional courts as part of the judiciary at the base of the hierarchy.
- (b) That the local Courts be upgraded to Subordinate Courts Class III and the Traditional Courts be given the powers to be courts of first instance in customary matters. Appeals would then flow from the headman to the area Court where the Chief would preside over the case and the District Traditional Courts, then to the Provincial Traditional Courts.
- (c) The traditional system of dispute resolution is more alike to mediation / arbitration other than the English adversarial system in the resolution of disputes therefore training in mediation should be established in Local

Courts and Traditional Courts and be made part of the system. This will help in putting into place some harmony as a result of the reconciliation, which is the foundation on which mediation is based.

In conclusion, this research has attempted to address some of the key areas, which needed some serious address in order to enhance the justice delivery in the local Courts as at now.

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