

In the criminal justice system, prosecutors have become the new judicial officers as they wield enormous power and regularly misrepresent the conduct of magistrates and judges in open court as and when they report to the illegal structures that receive reports on court cases. Any attempts to protect the interest of accused persons and other litigants are promptly reported to the Chief Justice's office who thereafter directs Heads of the various courts/divisions to investigate these. Judges are therefore now so afraid of their own jobs that they consciously and subconsciously make decisions that they consider "safe", even if these do not accord with the law. Where certain decisions are made which are unpopular with the Chief Justice, parties are directed to appeal with guarantees of success on appeal. With the recent protest by judges to subject their decisions to scrutiny by the heads of court/divisions, there is an ongoing witch-hunt on which judges instigated the writing of the letter of protest. Judges in the Association representing judges' interests have been targeted with the result that very few of us are now willing to be voted into the Association or to speak on behalf of judges. As a result of this fear, judges' conditions of service have not been reviewed as regularly as is necessary given the current economic environment. Yet JSC Secretariat staff are pampered. Judges continue to be given worthless RTGS fuel coupons and their drivers have to burn more fuel searching for the few garages which still redeem RTGS fuel coupons. Despite the Covid-19 threat, judges continue to share wigs, as for unclear reasons, not enough of these have been purchased. Our salaries as judges continue to lag behind and newly qualified young lawyers now earn more than judges, making it impossible to properly dispense justice as we are constantly worrying about day to day family issues such as where one's meal will be coming from on adjournment and how one will look after the family in line with what is expected of judges.

Your Excellency, these issues do not only affect magistrates and High Court judges. It is an open secret that no Supreme Court judgment can be delivered without the Chief Justice's approval. It is also an open secret and a source of much disquiet that all draft judgments in the Supreme Court are circulated amongst all the judges including those who did not hear argument on the matter. Judges who did not hear argument on a particular case can influence the result without having

even read the record. During the circulation, the Chief Justice can tell the judges to change their judgments. So who did not hear an appeal can in fact emerge with a decision which is wholly against what the appeal judges would have determined.

There is also what the Chief Justice calls "judgment by consensus", a euphemism for discouraging dissenting judgements. Where the Chief Justice is approached by a "favoured" dissenter, the dissenting judgement can be converted into the main judgment on instructions from the Chief Justice. On rare occasions where the majority stand their ground, the dissenter is forced to support the majority judgement. The Chief Justice basically has the final say on the Supreme Court and Constitutional Court judgements that are released.

There are also many direct conflict of interest issues that we see every day within the judiciary. For instance, the Chief Justice is happy to sit in the ConCourt in judgement of cases he was involved in at Supreme Court Level. The Supreme and Constitutional Courts are therefore the Chief Justice's courts where no judge dare disagrees with him for fear of victimisation.

There are also the obvious failures where like is not treated with like. A complaint against Justice Mabhikwa has been allowed to fester and it is an open secret that the Chief Justice sent a personal emissary to him on how to respond. This is particularly worrying as the alleged misconduct allegations against Honourable Justice Mabhikwa are similar to alleged misconduct allegations against the Chief Justice when he was a Magistrate. He concealed the misconduct allegations against him when he was interviewed for the position of Chief Justice and there can be no doubt that he is sympathetic towards Justice Mabhikwa as he is himself believed to be the guilty of similar conduct.

Then of course there is the Judicial Service Commission itself which is regarded as the Chief Justice's personal playground and fiefdom. It is an open secret that most of the decisions paraded as JSC decisions are in fact the Chief Justice's personal decisions which he instructs the Secretary of the JSC to communicate as Commissioners' decisions. Regrettably, it appears that Commissioners, in the main, do not challenge these decisions. There are also some clear conflict of interest issues that are allowed to pass without comment by Commissioners. For instance, the Chief Justice rents out one of his houses to the JSC. It is not clear whether or not this obvious conflict of interest was disclosed to Commissioners and whether they nevertheless allowed the transaction after ensuring that the JSC best interests were protected.

Then there are many other issues which may be characterized as outrightly corrupt such as abandoning the hiring of services from Rooneys in favour of hiring these from a company belonging to one of the Vice Presidents and his estranged wife at a cost far higher than that charged by Rooneys. There are also many other transactions that have raised eyebrows including the purchase of the chief Justice's residence where the owner received much less than the amount requisitioned from government. The renovation and furnishing of court rooms by relatives of senior JSC personnel across the country remains a topical issue which Commissioners do not appear to be addressing. The provision of other services by relatives of other JSC personnel including by a firm of lawyers where the CJ's daughter is a partner raises many conflict of interest issues as charges by the law firm are not likely to be subjected to scrutiny. And given the wide powers that the CJ has arrogated to himself, there is the ethical issue of whether this law firm can ever lose a case in the superior courts as the CJ determines who hears which case. The deliberately uninvestigated acts of nepotism and sexual harassment, allegations against senior personnel within the JSC hierarchy remain a cause for concern and compromise justice delivery as some female magistrates' progression within the magistracy is thwarted by these predators.

Then there is the general lack of judicial decorum by the Chief Justice who address judges as they are errant school boys and girls. This is exhibited at workshops and symposia attended by judge sand sometimes senior lawyers, at public gatherings such as the JSC interviews where the office of judge is not given the public respect it deserves and of course at the Supreme Court where judges are humiliated in front of others by being made to "clap for performers" and where perceived "non-performers" are dressed down in front of their colleagues. Being a Supreme Court Justice is the pinnacle of one's judicial career and it is extremely huilliating to be dressed down by the Chief Justice in front of colleagues whenan issue could have easily be raised with individual judges in the privacy of the CJ's Chambers.

Your Excellency, these are serious issues being raised against the Chief Justice and they deserve thorough investigation by an independent tribunal. For obvious reasons, as judges, we cannot append our names to this complaint due to the pervasive fear that currently exists within the judiciary. We are certain that this letter on its own will elicit tranny against suspected collaborators. As an investigation would help in clearing the air either way, we beg you, Sir, to investigate all of these issues. As some of the issues raised herein deserve investigation by ZACC, we are copying this letter to the Chairperson of that institution.

Your long suffering judges.

cc. Chairperson, ZACC (Honourable Justice Matanda-moyo)

: The Attorney General of Zimbabwe (Advocate Machaya)

**High Court and
Supreme Courts of Zimbabwe
Harare**

26 October 2020

**Your Excellency, the President of Zimbabwe
HARARE**

Dear Sir,

Re: Untenable working conditions within the judiciary

We address you, Sir, with fear and trepidation given the current fear which exists within the judiciary.

What is repeated in the public domain and on social media about the capture of the judiciary is no longer fiction or perception, it is in fact reality. It is an open secret that right across the judicial structures, the Chief Justice now rules without fetter. Where magistrates used to be subject to administrative supervision by their superiors, it is now an open secret that the Chief Justice now routinely interferes with magistrates and their decisions through the Chief Magistrates' office. The promotion without interviews of senior personnel within the Judicial Service Commission means that complaints fall on deaf ears as the senior unqualified personnel are there to protect their jobs and all the hefty perks that go with their jobs. At the Superior Courts, it is an open secret that judges no longer enjoy any respect and that administrative staff now spy on judges and report to the various Registrars who in turn make reports to the JSC Secretariat for onward reporting to the Chief Justice. As judges, we no longer trust our support staff from whom we now have to hide our draft judgments for fear of being directed to change these.

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