

**KEYNOTE ADDRESS AT THE LAW SOCIETY OF
ZIMBABWE'S SUMMER SCHOOL, NYANGA, ZIMBABWE**

BY

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**DEPUTY CHIEF JUSTICE AND JUDGE PRESIDENT OF
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Salutations

Madam President – Ms Rumbidzai Matambo

Mr Vice President –Mr Lison Ncube

Councilors

Executive Secretary – Mr Edward Mapara

Chairperson of the Compensation Fund

Learned legal practitioners

Ladies and gentlemen

- 1.** I am honoured and humbled to have been invited by the Law Society of Zimbabwe to say a few words at its 2023 Summer School. It is my first visit to this beautiful and most agreeable

part of your country. Our welcome since touching down at Harare and since has been most courteous and warm.

- 2.** I wish to thank the President and the Council of the Law Society of Zimbabwe and the Judicial Service Commission of Zimbabwe for the boundless kindness and generosity that has been extended to my judicial assistant and I since our arrival in Zimbabwe.

Madam President,

- 3.** Globally, we now live in the most momentous and exciting times. Change is happening around us in ways that we had not imagined just a few years ago. All aspects of human endeavor are undergoing change. The legal sector – to be precise, the practice of law and its regulation and the administration of justice – are not spared. We have to adapt and innovate – at times literally on the go – or become irrelevant. The COVID- 19 pandemic was the harbinger of this seismic change.

4. How fitting then, Madam President, that you have chosen as the theme for this year's Summer School – *'Adapting to Change while Retaining Core Values'*.
5. I propose in the time allocated to me to demonstrate to you the link between the seismic changes in our way of live with the theme that you have chosen for the Summer School.
6. When COVID-19 broke out in March 2020 almost every government in the world imposed lockdowns which severely restricted citizens' freedom of movement and shut down economic activity except for the most essential.
7. The result is that we were cut off from the work place. Overnight most of us shifted from in-the-office-working to homeworking. Even after easing of the restrictions, the work place had changed irreversibly. It was no longer predominantly the physical office. The home also became the work place.

- 8.** The pandemic made us realise that certain work could be done remotely. Major conferences were held and results achieved without getting on a plane. Judges heard some cases from home and lawyers addressed them from the safety of their homes. It introduced a new word in our lexicon: 'hybrid event'. If any proof were needed, this summer school is being held in hybrid format.
- 9.** The post pandemic period thus ushered in a hybrid-work place: partly at the office and partly from the home. For some, the hybrid-work place has become a permanent feature. The implications of that are enormous and are to be welcomed.
- 10.** In my own country, the innovations introduced for the apex court to function during lock down have now been codified in the rules of court and parties are given a choice to have virtual hearings if they choose to do so – although rarely used at the moment.
- 11.** I say this to make the point that although the pandemic was most unwelcome, it taught us important lessons about

innovation that we should harness. That applies with equal measure to the law firm.

12. I have a shrewd suspicion that the theme for this year's Summer School was borne of the realisation that the work place and the practice of law have changed and are bound to change more – and that the legal profession must adapt to that change.

13. Although most of the change at the work place is technology driven, some of it is the product of globalisation and much closer integration of nation states. As world economies become more inter-linked there is pressure to harmonise national laws for the seamless flow of money, goods and services.

14. While that presents huge opportunities, it also poses risks to nation states and drives the push for rapid changes in legal frameworks – often based on formulae adopted from other jurisdictions. Therefore, as lawyers we have to constantly adapt and innovate.

The existential threat

- 15.** Lawyers are in far greater demand now than they ever were. That is a function of increased regulation by the state of all facets of our lives. These days we have to complete all manner of forms and make regular declarations to banks, to our book-keepers and auditors, to the tax authorities, our own employer – the list goes on!
- 16.** Our countries face Grey-listing unless they comply with certain international standards. In that climate, as you will appreciate, the input of lawyers is necessary and most sought after.
- 17.** Young and upcoming lawyers are therefore offered mouth-watering opportunities outside the traditional practice of law. Retaining talent in the conventional fields of practice of law therefore becomes a major challenge. We experience it in the judiciary in my own country.

18. Judges' research assistants – after a spell of two years or more working and learning from judges - are most sought after by banks and corporations where they go on and achieve great success. I will be surprised if you are not faced with the similar problem in the practicing profession. If the trend is not arrested, the legal profession faces an existential threat. I therefore put to you, Madam President, that talent retention to save our noble profession is the most important challenge facing the organised legal profession

19. But how do we do that? I am sure that it is one of the things you will address during this summer school and continue after this event to remain engaged with as the organised legal profession. I have some thoughts of my own which you might find useful as you consider the matter.

20. In my view, the law practice work place environment must change to make it attractive for young talented lawyers to remain in practice. It is no secret that many talented young professionals will quit the work place if it does not embrace technology.

21. Law firms must introduce and increase the use of technology so as to stimulate the workforce through automation of more mundane tasks and empower lawyers to concentrate on high-value tasks for which they are trained and equipped. We should stop wearing lack of innovation and lack of innovation as a badge of honour. It is inconceivable that someone can today function as a lawyer without a Laptop and a smart phone. That should become standard issue for every new recruit into the firm. They are important tools for communication with the Court, the client and the rest of the profession.

22. The work place must also be safe for employees. Their mental health must be of paramount concern to the leaders of the practice and they should be encouraged, to the extent possible, to perform some of the tasks from home where circumstances make that possible – especially working mothers. It is now generally accepted that a progressive work place must have an employee wellness strategy.

Continuous professional development

23. Aligned to a good employee retention strategy must be a continuous professional development strategy. Lawyer competency is essential to the success of practice. There is no excuse these days for lack of basic competency in a chosen area of law practice. The Law Society must of course take the lead in upskilling its members but leaders of firms must encourage practitioners working with and for them to make use of the vast resources available these days even online to better equip themselves in the practice of law.

24. While on this subject, I wish to mention the need for specialisation. The trend in most African countries is towards a fused profession. Many of us have abolished the distinction between the attorney or solicitor and the advocate or barrister. Time does not allow me to debate with you the reasons for that change. In my own country, the principal justification was not to compel litigants to engage two practitioners when they could only engage one and in that way save costs. I was one of the prime movers of that change

in my country and I remain convinced by its correctness. But that said, having a fused profession is not the antithesis of specialisation.

25. Specialisation in two ways: In chosen areas of law and the nature of practice. Starting with the first: It is not easy to be a generalist practitioner in this day and age. Use your initial years of training and practice to learn about all aspects of the law and practice but move gradually towards specialising in a particular field. In that way, you give your client value for money.

26. When it comes to the second, it is often underappreciated how much judges benefit from very competent presentation of a case in court. Now, that is only possible if the practitioner sharpens his or her skill in advocacy. Effective advocacy requires proper and intense preparation. A good advocate drafts competent pleadings, is up to date with the case law and understands court craft and knows the mannerisms of the judges. You don't play the latter at grave personal risk.

27. In my experience - both from practice and on the bench, successful law firms rely on specialisation. They are structured into corporate and conveyancing and specialist litigation departments. Another way of doing things is for the Law Society to encourage the growth of a de facto Bar. I was encouraged to hear from the Executive Secretary that the Law Society of Zimbabwe is looking at ways to encourage a de facto bar in your country.

Better client management and interaction

28. Law practices must adapt to the changed reality that consumers' tastes have changed. Many prefer to transact a lot of their activities through apps on smart phones and tablets. Law practices must therefore invest in legal software that allows for interaction with clients online. Does a client really need to come physically to the office for an update on the status of the case? The trend in many countries now is mobile apps for lawyers, SMS texting and client portals that enable clients to check in 24/7 on the progress of the case.

Remain vigilant

29. Because of the nature of its work the legal profession is, regrettably, prone to being abused to achieve nefarious ends such as money-laundering. The moral of the story is that lawyers must be on heightened alert and, through appropriate due diligence, protect themselves from breaking the law.

The impact of economic slump

30. Based on my interaction with judges across the world I can safely say that more and more people represent themselves in court these days. The reality is that the state of the world economy is such that many households are concerned more about putting food on the table than paying for lawyers' services. This presents a serious dilemma for the practising profession that puts core values to the test. The instinct to make as much as possible out of the clients who are still able to retain lawyers' services by either overreaching or dragging out litigation to maximize billable hours.

Revisiting core values

31. As we navigate these changes you need to remind yourself as a legal profession, individually and collectively, of the core values which are the bedrock of the profession: integrity, independence, honesty; above all fidelity to the law. The radical changes I have mentioned will prove profitable to some but will eat into the profit margins of many a practitioner. It is in moments such as that the legal practitioner will be expected to rise to the occasion and live up to the values that the profession holds dear.

Madam President,

32. We have to accept that the way justice is dispensed will undergo even more radical transformation. The legal profession must be at the forefront of that transformation. There will be more – not less – technology in the courtroom. Court processes must be digitized and there should be less

and less reliance on paper. Judges too have to become technology savvy. Judges and practitioners must be able to access dockets remotely and enter orders and make court filings online.

33. But I want to comment on a more fundamental change of culture in the way justice is administered. Lawyering must shift from the orthodox adversarial to more collaboration between opposing lawyers with the focus being an earnest effort to isolate the real issue in a dispute from a maze of ill-digested causes of action and defences.

34. The judge's role must be transformed from the traditional umpire role to that of active case manager. By which I mean that judges must take an active part – together with the parties - in identifying at an early stage of the proceedings what is the real dispute between the parties and, working together with the parties, chart a course that will result in the adjudication of the dispute as speedily as possible and at minimum costs.

35. That is now the system of judicial case management that is taking hold in many jurisdictions across the world. We had introduced in Namibia in 2011 with remarkable results.

36. The days of over pleading – raising as many issues that you are able to muster in the hope that one might just stick - should be something of the past. Courts should decide only the real disputes between the parties. In that way court time is saved and judges can enrol and dispose of more cases. Discovery should be limited to what is truly in dispute between the parties and not to obfuscate and to terrorise the other side.

37. The greatest impediment to speedy trial are interlocutory skirmishes which drive up costs and drain the resources of ordinary litigants who are already struggling to make ends meet. Clients should be encouraged to mediate disputes and reduce exposure to legal costs. In Namibia, we have introduced – alongside our new system of judicial case management – a court-funded and court accredited mediation program in terms of which a majority of disputes

are referred by the judges to compulsory mediation. With that initiative, we significantly reduced the number of cases that actually go to court per year with resultant reduction in legal costs for litigants.

Madam President,

38. I must commend you and your Council for the choice of theme for this year's Summer School. The legal profession across the world needs to reflect on the changes taking place around us.

39. You need to debunk the myth that ours is a conservative profession averse to change. Change must be driven from within the profession otherwise others will do it for you –with unwelcome results. We must accept that the old ways of doing things are not necessarily the best. Such of the practices and traditions we keep must not stand in the way of progress. The public is becoming all the more well informed in this information age and are now trying their own

hands in the courts. We can only retain their attention if the services we offer are of good quality.

40. I am confident, looking at the program for the summer school, that when you leave the Nyanga, the legal profession in Zimbabwe will have a clear direction on the way forward in the quest to embrace change while remaining faithful to the core values that you cherish as a profession. As a not-entirely-disinterested onlooker, I will be following your progress with keen interest.

41. I thank you and wish you all the best in your deliberations

