THE ECONOMIC AND FINANCIAL CRIMES COURT, ZAMBIA

A PAPER PRESENTED BY

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1. <u>Introduction</u>

1.1 In his speech at the Ceremonial Opening of Criminal Sessions of the High Court on 7th January, 2022, the Chief Justice of Zambia, Dr. Mumba Malila, SC, announced the establishment of the Economic and Financial Crimes Court. The announcement was followed by the enactment of the **Economic and Financial Crimes (Division of Court) Order, 2022**.

1.2 The establishment of the Economic and Financial Crimes Court followed public calls for the speedy disposal of corruption and other economic and financial crimes. In his speech, announcing the establishment of the Court, the Chief Justice agreed with the pubic calls when he said that-

> **"Crimes of an economic nature, especially, deserve expeditious disposal because of their effect on the economy of the country."**

1.3 Before the introduction of the Economic and Financial Crimes Court, corruption and economic and financial crimes used to take inordinately long to be disposed of by the Courts, both at trial and appellate Court levels.

1.4 For example, a Subordinate Court acquitted the former President of Zambia, Dr. Frederick Chiluba, of corruption charges after a six-year trial.[1]

1.5 At the appellate Court levels, the classic example is the case of **Stella Chibanda Mumba, Katele Kalumba, Faustin Mwenya Kabwe and Aaron Chungu V. The People Appeal No. 418, 419, 420, 421**.

1.6 Among the Accused persons in that case were a former Minister of Finance and a former Permanent Secretary in the Ministry of Finance under President Fredrick Chiluba's administration.

1.7 The Accused persons in that case were charged and arrested for corruption and abuse of authority of office involving US$ 20 million in 2004. They were only convicted by the Subordinate Court six years later in 2010, and sentenced to 5 years imprisonment. The convictions were upheld by the

[1] https://www.sandiegouniontribune.com/sdut-af-zambia-chiluba-081709-2009aug17-story.html

High Court in 2013. The Convicts lodged a further appeal to the Supreme Court. The Supreme Court only confirmed the convictions in 2022.

1.8 Since all the Convicts had been on bail pending appeal, from the time they were originally convicted by the Subordinate Court, they only started serving their 5 year jail terms nearly 20 years from the time they were originally taken to Court.

1.9 The foregoing, among other factors, inspired the Chief Justice to establish the Economic and Financial Crimes Court.

2. <u>Establishment of the Court</u>

2.1 At the High Court level, the Court has been established as one of the Divisions of the High Court, pursuant to the **Economic and Financial Crimes (Division of Court) Order, 2022** [Statutory Instrument No. 2. of 2022].

2.2 At the Subordinate Court level, the Court was created as a Division in the Subordinate Court by **Section 3A of the Subordinate Courts (Amendment) Act No. 23 of 2023.**

2.3 When the Court was originally established, it did not have specialized Rules for fast-tracking cases. The Court relied on the Rules applicable to general criminal matters. For this reason, the pace at which cases were heard and determined still remained slow.

2.4 On 26th January, 2024, the Chief Justice made the **Economic and Financial Crimes Court Rules, 2024** [The Criminal Procedure Code (Economic and Financial Crimes Court) Rules, Statutory Instrument No. 10 of 2024].

2.5 The Rules came into operation on 1st March, 2024. They, however, also apply to the conduct of proceedings and appeals commenced before 1st March, 2024. **[Rule 17]**

2.6 I will briefly highlight the salient provisions of the **Economic and Financial Crimes Court Rules.**

3. <u>Procedure before the Court</u>

3.1 It must be noted that, in addition to the **Economic and Financial Crimes Court Rules**, the procedure before the Economic and Financial Crimes Court continues to be predominantly governed by **The Criminal Procedure Code.**

4. <u>Duration of proceedings (Part II)</u>

4.1 The most notable feature of the **Economic and Financial Crimes Court Rules** is the introduction of a timeframe of five months within which the Court should hear and determine a matter before it. The five months period starts running from the date on which plea is taken or an appeal filed, as the case may be. **[Rule 3(1)]**

4.2 The Rules recognize the fact that there may be instances where, for some reason, the Court may not conclude the matter within the five months period. To this extent, the Rules empower the Court, on an application by a party or at the Court's instance, to extend the period for conclusion of the matter for a period not exceeding forty-five days. **[Rule 3(2)]**

4.3 If the Court fails to dispose of a matter within the period specified by the Rules, the Court is required to render a report, in the case of a Judge, to the Judge-in-Charge, and in the case of a Magistrate to the Chief

Registrar, explaining the reasons for the delay in disposing of the matter. **[Rule 3(3)]**

4.4 Further, where the delayed matter is pending hearing, the Court is required to state the directions it has given to the parties for the hearing of the matter. Where the matter is pending delivery of judgment, the Court must state the new date given to the parties on which the judgment shall be delivered. **[Rule 3(4)]**

4.5 In order to further minimize delays, the Rules enjoin the Court not to grant an application for an adjournment except in compelling and exceptional circumstances. **[Rule 10]**

4.6 In addition, the Rules do not allow parties to appeal against a decision of the Court arising from an interlocutory application. Dissatisfaction with such a decision can only be raised in an appeal against the final judgment of the Court. **[Rule 12]**

5. <u>Proceedings (Part III)</u>

5.1 In order to make it more feasible for the Court to hear and determine matters within five months, the Rules require that, at the time of filing the charge, the Prosecution should file (a) a list of witnesses to be called by the Prosecution at the trial; (b) witness statements for those witnesses; and (c) a list and copies of the documents to be relied on at trial. **[Rule 4]**

5.2 The Prosecution will not be allowed to rely on a document or witness statement which has not been served on the Accused. In addition, the Prosecution will not be allowed to call, as a witness, a person who has not been named on the list of witnesses. **[Rule 5(4)]**.

5.3 However, the Court may permit the Prosecution to file a document or witness statement if the Court is satisfied that the document or witness statement was not available at the time they were required to be filed. **[Rule 5(6)]**

6. Pre-trial Conference

6.1 In order to make the proceedings more court-driven and to allow the Court to properly manage the tight timeframes, the Rules have introduced a pre-trial conference and a pre-defence conference.

6.2 There are numerous case management and compliance issues that the Court considers at the pre-trial conference. The Court will additionally proceed to issue the date for taking of plea. **[Rule 6(2)(b)]**

6.3 Further, in consultation with the parties, the Court will issue a time-table for the progress of the matter. **[Rule 6(2)(n)]**

6.4 In addition, where parties request, the Court may allow the parties to plea bargain within a specified period of time. **[Rule 6(2)(o)]**

6.5 At the conclusion of the pre-trial conference, the Court must issue directions which should include (a) the date of commencement of trial; and (b) the length of the prosecution's case. **[Rule 6(3)]**

7. <u>Disclosure by defence</u>

7.1 Where an accused person is found with a case to answer, and the accused intends to lead evidence in defence, the accused must file any document intended to be relied upon in defence within fourteen days from the date of being found with a case to answer. **[Rule 7(1)]**

7.2 The accused will not be allowed to rely on a document which has not been disclosed. **[Rules 7(3)]**

7.3 The Rules, however, give the Court discretion to allow an accused to rely on a document that has not been disclosed if (a) the document was not available at the time of the disclosure; or (b) it is in the interest of justice to allow the disclosure of the document. **[Rule 7(4)]**

8. <u>Pre-defence conference</u>

8.1 The Court will then summon the parties to a pre-defence conference. **[Rule 8(1)]**

8.2 Among the issues that the Court will address at the pre-defence conference, are the number of witnesses that the accused person intends to call; and the approximate amount of time the accused person's case shall take. **[Rule 8(2) (d) and (e)]**

8.3 At the conclusion of the pre-defence conference, the Court will set a date for commencement of defence.

9. <u>General Provisions [Part IV]</u>

9.1 In order to allow for some level of flexibility, the Rules give discretion to the Court, on application by a party or, in certain circumstances, at the Court's instance, to abridge or extend the time frames specified in the Rules for taking any step in connection with the proceedings. **[Rule 9]**

10. <u>Challenges</u>

10.1 There are a few teething problems. The main challenge is a question of adjustment by adjudicators, prosecutors, defence lawyers and even accused persons to the fast-track nature of the Court.

10.2 Furthermore, the Rules call for a lot of hard work and commitment in light of the requirement for cases to be concluded within a period of 5 months.

10.3 Some defence lawyers have complained that some Magistrates allow many adjournments during the case for the Prosecution. Then when the 5 months period is about to expire, such Magistrates put the accused person under pressure to quickly conclude the defence case.

10.4 The Chief Justice has taken note of the above and other teething problems. To this extent, training workshops are being held for adjudicators and prosecutors.

11. <u>Successes</u>

11.1 Since the Rules have only been in force from 1st March, 2024, their full impact on the rate of disposal of cases is yet to be properly assessed. However, preliminary indications by adjudicators are that the Rules have made proceedings more court-driven and thereby enhanced efficiency.

11.2 Another success brought about by the establishment of the Court is that, apart from sending those found guilty to prison, a lot of properties and money have been recovered through non-conviction based forfeitures or civil forfeiture proceedings brought under the **Forfeiture of Proceeds of Crime Act No. 19 of 2010**.

11.3 Examples are numerous. One of them is the case of **The People V. Charles Loyana and Susan Sinkala**. In that case, the two Convicts were husband and wife.

Charles Loyana was a Senior Accountant in the Ministry of Finance, while his wife, Susan Sinkala, was an Assistant Accountant at the Ministry of Works and Supply. On 30th June, 2023, they were found guilty of corrupt practices involving the possession and concealment of 48 houses valued at K37 million (equivalent to approximately US$ 1.4 million). They were sentenced to 3 years' imprisonment. The 48 houses have been forfeited to the State.

11.4 Another example is a case involving the former Deputy Inspector General of Police, Charity Katanga. The Court convicted Madam Charity Katanga in February, 2024, for, *inter alia*, the offence of possession of tainted property involving 10 Higer buses valued at approximately US$ 1,000,000.00 [K26,282,770.00]. She was sentenced to three years' imprisonment. The Court ordered the forfeiture of the 10 buses to the State.

11.5 More recently, on Friday last week, 27th September, 2024, the Economic and Financial Crimes Court made a non-conviction based forfeiture order for 15 double storey flats belonging to Mrs. Esther Lungu, the wife of the immediate past President of Zambia, Mr. Edgar Lungu. The flats are valued at K66 million [approximately US$ 2.5 million].

12. Conclusion

12.1 In conclusion, one would submit that Economic and Financial Crimes Courts are an important judicial platform for the expeditious disposal of corruption and other economic and financial crimes. Although the Economic and Financial Crimes Court of Zambia started at a relatively slow pace, early indications show that the enactment of the specialized fast-track Rules will have a positive impact on the rate of disposal of cases.