

Our judges have too much workload to attend to

IS MALAWI LAW SOCIETY RIGHT TO PROPOSE IMPEACHEMENT OF JUDGES WHO DELAY CASES?

Yes...They are a threat to justice delivery and development

No...Our judges are already few

BY GEORGE JIVASON
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MALAWI is one of the developing countries where the Judiciary has a huge backlog of cases. From my personal experience in the practice of the law in the country, the Judiciary is, generally speaking, failing to dispose of cases expeditiously and within a reasonable time.

I have examples of clients who walked into my office with their complaints from as far back as the year 2010 but up to now, there is no judgment on the matters. Recently, the legal fraternity was shocked when a judgment circulated that showed that a gentleman whose programs were disrupted by the conduct of Ethiopian Airlines which failed to honor its own airline air ticket, and sued the Airlines in the year 2000 for damages for inconvenience, had to wait for a whopping 19 years for judgment to be delivered on his matter in 2019.

Although most part of the backlog of cases is in the High Court, subordinate courts too have their own backlogs, more especially the Industrial Relations Court. In my practice of the law, I have observed that the Magistrate Courts across the country deliver justice more speedily than any other courts in the country although they handle a lot of cases.

Delay in the delivery of justice is one of the reasons for which this country remains poor. It is stated elsewhere that an effective judiciary is predictable, resolves cases in a reasonable time frame, and is accessible to the public; and that delays in delivery of justice erodes individual and property rights, stifles private sector growth and violates human rights.

Delays in delivery of justice is a sure way of impeding access to justice, and it is further said elsewhere that this, in effect, weakens democracy, the rule of law and the ability of the country



RARELY KEEP YOU WAITING—Kapindu and Kachale

to enforce human rights.

You will imagine a situation where a business person whose money is not being repaid by debtors has to wait for four to 10 years to get his judgment. A woman in Nthalire, Mponela or Mloza whose land has been grabbed has to wait for seven years for delivery of justice in her matter.

A victim of a road accident has to wait for five to 10 years before the court orders that he be compensated. An employee who is dismissed from employment without terminal benefits and rushes to court to get assistance has to wait for 10 years to get those terminal benefits. How can those litigants develop economically in such scenarios? How can those litigants contribute to the development of the country when their money is locked up in the courts? It is very clear that courts are hugely contributing to the stagnation

of the country. I have also come across situations where a convict is sentenced to, say, seven years imprisonment with hard labour by a Magistrate Court and he appeals against the judgment to the High Court. In some cases, the convict serves the whole seven years or a good part thereof before the judge delivers judgment on his appeal.

There are countries in the world where justice delivery is faster. I have personally read cases from foreign jurisdictions where judicial officers take two to three weeks to dispose of cases.

Immediately upon release from prison before the judgment is delivered, the first port of call for the ex-prisoner is his counsel's Chambers, guns blazing, demanding a refund of his legal fees, because he believes that the counsel has not assisted him,



at all, yet it is the court that is not doing its job right.

There are countries in the world where justice delivery is faster. I have personally read cases from foreign jurisdictions where judicial officers take two to three weeks to dispose of cases.

However, to be fair to our judges and other judicial officers, there are a number of factors that contribute to delays in delivery of justice. Firstly, judicial officers in the country are too few to serve the population that files cases with the courts. With a population of over 17 million, we

have less than 50 judges for both the High Court and Supreme Court of Appeal. In the Industrial Relations Court, we only have one judicial officer to handle labour cases in the whole Northern Region, one if not two in the Central Region, one or two

in the Southern Region. The backlogs in these courts is therefore not surprising. Our country is a big joke in that respect.

Why we do not recruit more judicial officers is a mystery to me. It just shows that those with authority are either not aware of the key role that the Judiciary plays in the economic development of a country or are not keen to see this country move from the abyss of poverty where it has always been.

Secondly, delays in the delivery of justice are caused by laziness of individual judicial officers. The rules of practice in the High Court are very clear. Once the Judge has concluded hearing matters in chambers, he or she has only 30 days to deliver judgment and 90 days to deliver judgment if the matter went for full trial in open court.

If we use such yardstick to pick judges who must be impeached by Parliament and removed from office, then almost the whole bench will be gone! There are, of course, exceptions. From my personal experience, out of many hardworking judges, I will mention the names of

Honourable Justices Professor Redson Kapindu, Kenyatta Nyirenda and Chifundo Kachale as judges who will very rarely keep you waiting beyond the said time limits before you get your judgment.

For those judges who delay cases due to laziness, they are part of the reason for which this country is poor. They are occupying the bench which ought to be occupied by people who are meant to be judges. They disrespect the rules of practice which set the time-limits within which judgments should be delivered.

Malawi Law Society is right. The only solution is to remove them from the bench by way of impeachment. The criterion for picking judges whom our Members of Parliament must impeach is simple enough. If the judge has not delivered any judgment within the said time limits, then they are eligible for impeachment.

A judge should be the last person to breach rules of practice of the law. A judge who is too lazy to deliver judgments within the time limits set by rules of practice must voluntarily cease to be a judge or face impeachment, to pave way for those interested in the job. For the judges who cannot resign, the way forward is for litigants who have waited for judgments beyond the said time limits to lodge complaints with their Member of Parliament or the Malawi Law Society who will facilitate a Motion in the National Assembly to impeach the errant judges.

For those other errant judicial officers in the Magistrate Courts and the Industrial Relations Court, the way forward is to report them to the Malawi Law Society or Members of Parliament who will forward the complaints to the Judicial Service Commission for disciplinary action.

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BY GUSTION ANIVA

IMPEACHMENT of judges is a process by which the political branches of government – in Malawi's scheme of constitution, the legislature – can remove judges from office. Because the impeachment power lies primarily in the hands of politicians, it is at times threatened for partisan reasons, but the impeachment and removal of judges is in fact rare and usually limited to grave ethical or criminal misconduct such as perjury, fraud, or conflicts of interest.

The Malawi Law Society's (MLS) call for impeachment of judges is grounded on a conduct of delaying cases. This is neither a great ethical misconduct; conflict of neither interest nor criminal conduct such as perjury or fraud.

Rather, delaying of cases relates to a judicial act of dispensation of justice that entails delivering rulings beyond a reasonably expected timeframe. There is no constitutional or statutory limitation defining the correct timeframe within which a ruling has to be delivered. That scenario leaves the power of determining what constitutes "a delay" to an arbitrary process which may be prone to political abuse.

Historical practice suggests a strong tradition against impeaching judges for judicial rulings. Chief Justice William Rehnquist, who wrote a book examining the history of judicial impeachment, found that early historical uses of the impeachment power established a norm that "judicial acts – their rulings from the bench – would not be a basis for removal from office by impeachment."

In 2002, there was an attempt to use the impeachment power of the Parliament against three of the then High Court judges Dunstan Mwaungulu, George Chimasula Phiri and Anaclet Chipeta for partisan reasons.

While charges levelled against Justices Mwaungulu and Phiri were 'misconduct, misbehaviour and rudeness', charges against Justice Chipeta



JUST COURSE—Impeachment would threaten the independence of the Judiciary

were instantly dropped and the impeachment proceedings targeted the remaining two.

However, when it became so clear that referring the matter to Parliament constituted a giant breach of the judiciary independence, the President then referred the matter to the Judicial Service Commission. The significance of the separation of powers that was envisaged in withdrawing the matter from Parliamentary (impeachment) proceedings cannot be overlooked at present on the said ground of 'delaying cases.'

The delay of cases may constitute a disciplinary issue for which there exists an internal disciplinary process by the Judicial Service Commission. If there appears to be laxity on the part of the Judicial Service Commission to enforce the applicable disciplinary measures, the remedy cannot and should not be to breach the separation of powers by allowing the legislature to usurp the disciplinary role of the judiciary itself, but rather

such that enforcement of the applicable discipline becomes a challenge to an extent.

Nevertheless, the constitutional democracy, the type of which Malawi is, demands that the independence of the judiciary be jealously safeguarded. The entire enterprise of constitutional governance would be placed in jeopardy if the judiciary

reform the system to enforce compliance.

Indeed, as found by the International Commission of Jurists (ICJ) which sent a fact-finding mission to Malawi from 16-22 December 2001 to investigate the attacks on the independence of judges and the rule of law, there has been lack of functioning rules of procedure for the JSC hearing

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If truth be told we have of late seen our courts expedite cases to the best of their ability and for once wheels of justice in Malawi are on a good course and it's out here for the whole world to see.

As such it would be unfair for anyone to propose impeachment of these very few officers who dedicate their time and energy most likely beyond reasonable hours to work, on grounds that they delay cases, when we all know most of the reasons are beyond them.

feels that it will be subject to discipline and removal in response to the legitimate discharge of judicial duties.

It is a fact that our judiciary, like other government departments, is understaffed. Our judges have too much workload to attend to. And looking at the complexity of their work which mostly involves a lot of research and reading,

therefore to expect these few officers to work like some other super humans who can attend to files at extraordinary speed.

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