

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world-class justice prevails!”



GUEST OF HONOUR'S SPEECH

**BY THE CHIEF JUSTICE OF ZIMBABWE
THE HONOURABLE MR JUSTICE LUKE MALABA**

**DELIVERED ON THE OCCASION OF THE 2024
FACULTY OF LAW GRADUATION CEREMONY**

UNIVERSITY OF ZIMBABWE – HARARE

13 SEPTEMBER 2024

SALUTATIONS,

The Vice Chancellor of the University of Zimbabwe, Professor Paul Mapfumo,

The Executive Council of the University of Zimbabwe,

The Dean of the University of Zimbabwe's Faculty of Law,

Distinguished Faculty Members,

Honoured Guests,

Parents and Guardians,

Graduands,

Ladies and Gentlemen,

I am honoured to have been invited to join all of you as the Guest of Honour on the occasion of the 2024 Faculty of Law's Graduation Ceremony. The occasion celebrates the outcomes of hard work, commitment and perseverance in the academic journey. It is a day of celebration that carries for the graduands, their parents or guardians, the University and the community at large, significant importance.

Allow me, at the outset, to congratulate the graduands, the lecturers, family and friends gathered here today for achieving this milestone. For the graduands and all who played a part in their study of law at the University, there is deserved happiness. Our society, for good reasons, values education, and the pursuit of it. The attainment of a degree is no light matter. It represents the culmination of an entire community's effort into your life. It is for this reason that graduating at the tertiary level calls for a celebration of this nature. There is no better evidence of final achievement in the study of the subjects of substantive and procedural law for four years at the Law School than the Graduation Ceremony.

Indeed, most of the graduands today have been travelling the academic journey for four years. You have built relationships, gained knowledge, and transformed yourselves and are now being conferred with degrees as proof of your achievements. The success you celebrate today is built on the financial, moral and spiritual support of your families, friends and lecturers who are celebrating with you today. While the value that society and your community have placed on your education, in itself, is honourable, so are your efforts. Consider this graduation as the

attainment of a stage in your life where you celebrate, as friends and as a community of the Law School, the culmination of years of the impartation of knowledge. I pause, therefore, and ask all of you to applaud yourselves for achieving this milestone.

Whilst celebrating with you the accomplishment of the journey of the study of law, we also acknowledge and understand the unease and the feelings of anxiety gripping graduands over what the future holds in store for them. The feelings of anxiety are not peculiar to you. They grip every graduand because we undertake studies at university with a view of securing jobs and a successful working life after graduation.

It is, however, a fact that, just as the graduation today marks the end of life as a student of law at the University, it also marks the beginning of the next phase of your lives. This is the phase of the life of the practice of law. You have studied the various aspects of the branches of the substantive and procedural law. You are now about to enter the real world of the practice of the law learnt at Law School. This is the exposure that will determine whether you are a good lawyer or not.

To fully understand the significance of the conferment of a degree on you, it is noted that you have been journeying with the vision of becoming lawyers in various areas of legal practice. Your accomplishments will take you to different avenues that the study of the law provides. Some graduands may join the private practice sector and the corporate sector, and others may join the public law sector or become leading members of the academia. Some will fly the flag of Zimbabwe high on the global scene as members of international organisations.

Within these highlighted disciplines of the law, there is a diversity of avenues that one may pursue. For instance, those drawn to the public law sector may join the Judiciary in several capacities. Some may become Registrars within the courts, Researchers attached to Judges, or Legal Officers with the Judicial Service Commission Secretariat. Others may join the Attorney-General's Office and the National Prosecuting Authority as state prosecutors. Outside the law and justice sector, some may elect to join Government ministries providing critical legal input that informs the activities and operations of State institutions.

In the private sector, some will eventually become renowned advocates appearing in the Superior Courts. Some will be attorneys at law providing legal services to clients. Some will become transactional lawyers involved in large-scale negotiations that are vital to the economic future of the country. In the corporate sector, some will find their footing as Company Secretaries and captains of industries for various leading corporate firms and agencies.

For those interested in academia, it will certainly become a full circle moment as some of you are absorbed by higher and tertiary institutions as Deans, Professors and Lecturers. It will certainly be no great surprise to encounter you in the future as vibrant leaders of the University of Zimbabwe.

The law, as a profession and as a pillar of society, requires individuals of character, intellect, and commitment to uphold justice. Becoming a lawyer is not in itself a goal, nor is it an end result. A lawyer occupies an office conceptualised by the community to serve the ends of achieving peaceful and progressive cohabitation in a just society. As such, lawyers in practice evolve and transform into guardians and

wardens of the law who ensure that the legal system operates in a high state of efficiency and effectiveness.

The practice of law is itself a college of practical legal education. The assumption is that lawyers study law at Law School and learn how to interpret and apply it in the resolution of concrete disputes during their working lives. As a law graduate, you must choose the area of law you intend to join and contribute to its advancement. The process of deciding on the legal sector you intend to join is not always straightforward. Quite often, that choice is an outcome of lived experiences in the legal world. It is hoped that the experience shared today will aid your professional choice. Whichever choice you ultimately make, it must be based on and grounded in a proper understanding of your function as an occupant of a legal office. You must know what your desire, passion and vision are as well as what is required to fulfil them. The pursuit of our desires, passions and visions in the legal profession must be grounded in the social function of the law.

With this, it is emphasised that the practice of the law is a vocational calling that is inspired by the desire to serve. The primary driving force for lawyers must be the need to serve others. The reason is that law is a tool created to ensure fairness in the interactions and dealings of the community.

Strictly speaking, in the practice of law every lawyer assumes the prestigious status of being an agent of the law. In other words, a lawyer is the product of or a creation of the law for its purpose of having justice done and seen to be done to those deserving it. The conferment of a legal degree on you commences your agency for the law. In the case of graduands who are being conferred with postgraduate degrees, and are already lawyers, it solidifies such agency.

The noble profession calls upon lawyers to serve society. The service to society is premised on upholding justice and the protection and promotion of the rights of individuals. A conscientious lawyer must endeavour to ensure that the legal interpretation of the law is given practical effect. This is synonymous with the principle of the rule of

law. The primary objective is to ensure that there is parity of treatment and fairness for individuals who access legal and justice mechanisms.

Lawyers are involved in interpreting and applying the law so that it achieves the purpose for which it was institutionalised and the ends of justice. Wherever you are and in whatever sector you join, you must act in the interest of the law. You must, therefore, consider yourself as a person with a special calling.

It is important for you, as the graduands, to understand that you have the will to decide how you will exercise your agency of the law. The conduct, ethics and practice of lawyers are based on the law. How a lawyer decides to execute his or her agency of the law determines whether he or she becomes a good or a bad lawyer. Accordingly, it is important to emphasise that whatever office of the law you choose to occupy, you must always act under the law as its agent.

A lawyer's position as an agent of the law imposes an obligation on him or her to be redefined and abstract himself or herself in accordance with the demands of the professional office. The reason is that as a lawyer, the community regards you as a legal expert. It depends on you

to assist it in dispute resolution and ensure that justice and fairness prevails in all facets of human endeavour.

Abraham Lincoln, a former President of the United States of America, lawyer and statesman, who is quoted below, pondered on the function of a lawyer as an agent of the law. He wrote:

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser --- in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it.

The matter of fees is important, far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client.”¹

As agents of the law, lawyers are not only expected to act when they receive a dispute but to also properly advise the community so as to prevent disputes. The lawyer uses the law to serve the community.

¹ University of Michigan. “Letter from Abraham Lincoln to Mary Todd Lincoln, November 2, 1864.” *Collected Works of Abraham Lincoln*. Accessed September 12, 2024. <https://quod.lib.umich.edu/l/lincoln/lincoln2/1:134.1?rgn=div2;view=fulltext>.

The meaning of the agency for the law exercised by lawyers is that lawyers are custodians of the law. This is so because the law operates in favour of the people whom it seeks to protect. Hence, the lawyer's interest must be to maintain the legal order guaranteeing peace among individuals as well as among States.

It is necessary to briefly digress and advert to the work of the Judicial Service Commission ("JSC") in advancing and administering justice. The JSC is established in terms of the Constitution to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice in Zimbabwe.³ In this regard, one of the flagship achievements of the JSC is taking a lead in the modernisation of justice delivery in Zimbabwe. Through the Integrated Electronic Case Management System ("IECMS"), the JSC has made possible digital access to the courts and virtual court hearings. Court process can now be filed online in all Superior Courts, with the magistrates courts scheduled to be digitalised as from 01 January 2025.

It is hoped that you have been prepared for the modernisation of the practice of law currently taking place. The practice of law has become electronically driven. It has become paperless. Gone are the days when legal practitioners would take pride in going to court followed by clients staggering under the weight of heavy briefcases full of papers. Gone are the days when legal practitioners took the opportunity to demonstrate their depth of the knowledge of law by spreading on the table papers heavily underlined with yellow felt pen colours for emphasis of paragraphs and memory. Computers, such as laptops and iPads, now carry the soft copies of the necessary documents for use in court. You are encouraged to contribute to the ongoing efforts to reform and modernise the judicial processes, ensuring that they meet the needs of a rapidly evolving society.

The adoption of information communication technology in the administration of justice and the availability of stable and high-speed internet at affordable cost in the country means that your generation is poised for exciting times in the practice of law.

The reason for saying this is to conscientise you to be alive to technological trends as you act as agents of the law. Technology has inevitably been infused into legal practice. As young lawyers, it is expected that you will put technology to good use in interpreting and applying the law.

Moving on, a lawyer who lacks an understanding of the purpose of the vocation will not be able to sustain it. You must never lose sight of the professional calling. This is an exhortation to act for the law and in accordance with the law.

Acting lawfully requires one to be ethical. The law demands all lawyers to be fit and proper persons. A rite of passage for most legal graduands following their graduation is their registration as legal practitioners by the High Court. The consideration by the court upon registration is the test of “fit and proper person”. This is essentially an assessment against the personal qualities of honesty and reliability. These qualities are important to the preservation of the integrity and honour of the legal profession. As lawyers, you must be conscious of the fact that fidelity to the law has the potential to shape and influence social norms and

values. This is a transformative power that your qualification as a legal practitioner bestows.

The law includes in its provisions the rules for the performance of legal duties. It is incumbent on a lawyer to know what the law demands of him or her ethically and to act in that manner. As has been said on other occasions, one must know the right thing to do; the right way of doing the thing; and to do the thing at the right time.

Relatedly, the law does not countenance corrupt agents. The effectiveness of the law is based on its faithful application by its agents. It is not acceptable for lawyers to commit fraud, bribery or embezzle trust funds in the administration of justice. The same applies to the problem of laziness in the performance of duties. A lawyer who fails to perform his or her obligations in accordance with the law obstructs the attainment of justice.

The obligation to act lawfully and ethically encompasses the need to continuously develop and acquire legal knowledge. Learning does not stop. As a lawyer, you will acquire new knowledge by doing and by reading, that is experiential learning.

The truth of the matter is that one cannot properly interpret and apply the law in a contestation unless one fully understands that law in the context of the issues calling for its interpretation and application.

The learning of law in the course of its practice is, therefore, accompanied by and demands a deep reflection on and analysis of the law in the context of the relevance of its application to real problems of life. Hence the need for continuous legal education.

Not only have the institutions in charge of the administration of justice, including the Law Society of Zimbabwe, adopted the mantra of continuous legal education in the policies governing legal practice, they are rigorously enforcing it. The reason is that the practice of law is an institution involving the exercise of authority derived from the people. The practice of law is for the benefit of the people.

Although the law has institutionalised continuous education and training for lawyers in various sectors, it remains your obligation to independently pursue the same. The practice of law involves an intellectual challenge to indulge in critical thinking in acquiring

analytical skills that will benefit society. The legal profession requires innovative minds to maintain the legal order.

If for a lawyer the purpose of providing legal services is to ensure conveyance of justice to those found to be deserving it according to the law, money cannot be the main objective for participating in legal practice. Apart from the fair rewards for professional services rendered, lawyering is meant to be a calling. There is no scope for the commercialisation of the dispensation of justice. In other words, the lawyer's ambition should not be to get rich. The moment the legal profession's primary interest is to generate wealth from the administration of justice, it ceases to be a body of agents of the law and the law is subverted. Experience confirms that any person in a professional vocation who acts with integrity ultimately gains honour in his or her community and makes a profit. You will be rewarded for due diligence and ethical conduct applied in your practice consistently. That is said, notwithstanding that lawyering can be turned by some into a lucrative or high stakes business enterprise.

The expectation of you acting lawfully and ethically is an embodiment of a standard that binds all persons in the legal profession. The breach of this standard disqualifies a person from practising law and terminates their agency for the law. It is not expected that once registered any of you will be struck off from the roll of legal practitioners in future. Helpfully, the consciousness of your status as an agent of the law equips you with the stamina to withstand unlawful and unethical practices.

That does not mean that as a legal practitioner you must always get your act right. The law takes into account the fact that its interests will be served through the agency of human beings. Lawyers are human beings and as such prone to fallibility. They will as human beings occasionally make errors of judgment. The legal system does not guarantee infallibility of its human agents. It demands and guarantees fairness of the actions of the agents. This is in the sense that as a legal practitioner you will have to act honestly in an endeavour to ascertain to the best of your professional ability the factors required by the substantive or procedural law you seek to vindicate and act accordingly.

An error or mistake is such if it is committed inadvertently. When one has made a mistake or erred, what matters is not that one has missed the standard, but the steps taken to remedy the error and to avoid it in future.

Mistakes in the practice of law do not mean failure on the part of the lawyer. They are in fact evidence of a person who has assumed the task of learning by experience the skills of using the law as a means of protecting, promoting and fulfilling the interests of those whose rights may have been violated.

In the status of the agent of the law, a legal practitioner should not fret over a decision in a case which has gone to the other party. It is his or her duty as an agent of the law to accept the decision as being in accordance with the law, subject to the exercise by the client of the right of appeal or review.

The outcome of a dispute under determination by a court of law must never be seen as a personal victory or a personal loss by the legal practitioner involved in the contestation. By its very nature legal practice is a highly demanding profession. Built into the system of the

practice of law is the principle of acceptance of the fact that mistakes are an integral aspect of the experience gained over time from legal practice.

In your practice as a lawyer, remain humble and act civilly towards others. Arrogance is not expected of lawyers. Your agency of the law begins with how you treat those around you. You remain a product of a community that is founded on and emphasises norms and cultures of respect and humility. Remember to always strike a balance between your agency of the law and your obligations to your family and community. This entails maintaining cultural norms despite your new designation as legal practitioners. As you interact with your family members, you must always remember the duty to conform to proper norms governing family relationships. This involves maintaining respect and compassion for your elders and siblings.

Underlying this duty is the concept of *hunhu/ubuntu*, which is an African philosophy tied to human dignity. In this regard, an individual is the sum of a collective social order which involves the obligation to treat others with the necessary respect. It takes a community to raise a

person. A lawyer who is unable to treat his or her immediate community with the necessary respect cannot add any value to society.

Service to your community entails taking up *pro bono* work. It has already been mentioned that the law exists to ensure that all persons are treated fairly and equally. Regrettably, not all persons can afford the services of a lawyer of their own choice. The poor or indigent members of society are, in circumstances where legal practice has been turned into a high stakes business enterprise, unable to access legal services. As a result, they are denied access to a system of justice set up for their benefit. A lawyer, whether in private practice or working in the public sector, must always be conscious of the situation of the poor and vulnerable groups of society and their plight in accessing legal aid. As lawyers in private practice, you should be prepared to and willing to provide *pro bono* and *pro deo* legal services to the indigent members of the community. The law should never be seen as an exclusive domain for the financially privileged; it must serve the needs of all citizens, particularly the marginalised.

The former Judge of the Supreme Court of the United States of America Ruth Ginsburg aptly observed that:

“Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities.”²

This service highlights a commitment to the ideals of social justice which are consistent with the legal profession’s recognition as the noble profession.

As you leave the hallowed halls of this institution and go forth into the world, may you carry with you the values that this esteemed institution has imparted – values of integrity, knowledge, diligence, innovativeness and professionalism. Together, we can build a legal system that truly serves the people and strengthens the fabric of our constitutional democracy.

I now leave the graduands with this question to ponder over: “What kind of agent of the law are you going to be?”

² John Marshall Law School. “Pro Bono Outreach.” *Career Services & Professional Development*. Accessed September 12, 2024. <https://www.johnmarshall.edu/ajmls-students/career-services-professional-development/externships/pro-bono-outreach/>.

I THANK YOU!