

Zimbabwe's deteriorating culture of accountability and the story of the Chief Justice who won't go

Zimbabwe recently dominated international news headlines, after the country's [High Court](#) made a ruling that nullified the extension of office by five years of the country's former Chief Justice Luke Malaba who had reached the retirement age of 70.

While many applauded this ruling, many of the latest developments around it are emblematic of Zimbabwe's deteriorating culture of accountability, a violation of the principle of separation of powers, and a stain on the integrity of the courts.

Firstly, there are attempts by President Mnangagwa to foist the Chief Justice on the judiciary. From Mnangagwa's perspective, Malaba brings the "advantage" of having presided over the 2018 Constitutional Court challenge from the MDC Alliance leader Nelson Chamisa, who garnered 44.3% of the vote against Mnangagwa's 50.8% according to the official results by the Zimbabwe Electoral Commission (ZEC), which the opposition contested. Clearly, Mnangagwa intends to avert a replay of the Malawian case, which saw the country's [Supreme Court](#) affirming the Constitutional Court's nullification of former President Peter Mutharika's re-election bid on account of irregularities. This historic ruling became the genesis of a victory for President Lazarus Chakwera. In Zimbabwe, the obvious political calculus from Mnangagwa's camp is that, in 2023, the opposition will find "comrade" Malaba waiting for them, or anyone else apologetic to Mnangagwa's life presidency (that is if there is a change of personalities).

Secondly, in attempting to stick to its “point man” the Zimbabwean government has in the past two weeks demonstrated its disdain for the separation of powers, after the country’s Justice minister [Ziyambi Ziyambi](#) issued a scathing attack on the High Court judges, whom he accused of being “captured” and acting on behalf of Western interests. This shows that the arms of state are not equal and that it is the executive which dictates the play. Parliament on the other hand has of late become a vehicle to railroad unconstitutional amendments meant to weaken the judiciary.

Moreover, the Minister’s attack is a testament of how the government continues to view the judiciary as a lapdog of its elite interests ahead of the 2023 elections. Although Mnangagwa postures as a proponent of judicial independence, he however salivates at the thought of a compromised judiciary which is a cog of his power retention strategy outside the ballot box. Public protests which have brought political change in other countries have been met with state violence in August 2018. The judiciary is therefore the last resort to give a veneer of legitimacy-in the event the opposition chooses to bring cases of irregularities before the court.

Thirdly, notwithstanding the aforementioned High Court ruling, the judiciary which is supposed to follow the constitution to the letter now appears to be the face of lawlessness at a time it is supposed to show integrity and uphold the rule of law. Within the last two weeks, Zimbabwe has had an unenviable record of having [acting Chief Justice Elizabeth Gwaunza](#) in office and the intransigent former Chief Justice, Malaba, returning to work on account of a technicality of [government’s notice of appeal](#) on the High Court ruling. Apart from the absurd political reasoning, Malaba’s extension was further sugar-coated on account of his [“mental and physical fitness to continue in that office”](#).

These developments have a negative bearing on the reputation of the courts. Malaba’s four decades of experience in the

judiciary should have exemplified knowledge, wisdom and intelligence. On the contrary, he is the one violating the expected legal standards which his office is supposed to spearhead. At the end, Zimbabwe has a former Chief Justice, who is now back in office as the Chief Justice as the court processes continue. He simply won't go! *Hakuna kwaarikuenda* (as it is better said bullishly in the Shona language).

Lastly, the continued insistence on Malaba is problematic because it blocks the natural processes of integrating younger and professional judges. As a consequence, the opportunity to serve is now being denied to them courtesy of a stubborn geriatric who clearly has blessings from above. Unfortunately, the result is that young people who dominate the country's demography see incumbents like Malaba, as part of an institutionalised system that is there to perpetuate the status quo at all costs and which resists needed and urgent reforms.

On account of the above, it is clear that Zimbabwe is in for a long ride with a Chief Justice who continues to stay put against all odds, with the blessings from President Mnangagwa. Sadly, Mnangagwa's New Dispensation, also known as the Second Republic, has become a sobriquet of the old order in which the bench was severely weakened. Although Chief Justice Malaba is the immediate problem given his reluctance to vacate office, he is a microcosm of a system of bad governance. That is the problem.