

REPORT BY MAGISTRATES ASSOCIATION OF ZIMBABWE ON CONDITIONS OF SERVICE INCLUDING WORKING CONDITIONS AND RELATED ISSUES FOR MAGISTRATES IN ZIMBABWE

EMPLOYMENT STATUS – THE BACKGROUND

Prior to 18 June 2010, magistrates in Zimbabwe were civil servants employed by the Public Service Commission through the Ministry of Justice, Legal and Parliamentary Affairs.

On the above date, magistrates were effectively moved to the Judicial Service Commission which became their employer.

This move did not have any practical effect on the conditions of Service and other benefits for magistrates as they remained linked to those of Civil Servants.

The 2013 constitution

This one changed greatly the legal landscape in Zimbabwe especially on provisions relating to the Judiciary. The current constitution now contains provisions relating to employment of magistrates, conditions of Service and related issues. The provisions expressly provide that the Judicial Service Commission shall be responsible for employment, discipline, dismissal, transfer and remuneration of magistrates.

However these provisions have not been brought into effect because there is no enabling Act of parliament to operationalize what the constitution has provided for.

The Judiciary Service Commission and the Ministry of Justice have been dragging their feet in coming up with legislation that harmonises the Judicial Service Act and Magistrates Court Act with the current Constitution.

As Magistrates Association of Zimbabwe we are still engaging both the Judicial Service Commission and the Ministry of Justice to close this legal lacuna.

CONDITIONS OF SERVICE

Currently conditions of service of Magistrates in Zimbabwe and their salaries in particular are still civil service linked. They get salaries similar to those in Civil

Service by way of comparative grading. The Public Service Commission processes their salaries through its agency, the Salary Service Bureau.

Magistrates in Zimbabwe get salary increments whenever Civil Servants get one. Similarly if they are not paid an annual bonus it will apply to Magistrates. For instance the Minister of Finance gave an instruction that the annual bonus for 2018 be paid based on basic salary only. The statement was made without exception and magistrates got a reduced annual bonus. Over the years we were being paid a full bonus and thus over view of the Ministerial statement was that we suffered a reduction in our remuneration. This was despite a Constitutional guarantee in section 188(4) that salaries allowances and other benefits of members of the judiciary must not be reduced whilst they hold or act in the office concerned.

We have written to the Commission over this issue and they agree with our opinion that Minister's statement is unconstitutional in so far as it is meant to include judicial officers. However no solution has been found to date.

SALARY NEGOTIATIONS

As mentioned above, despite the Judicial Service Commission being made employer of magistrates there has not been any meaningful negotiations with the result that we get the same salary increment awarded to Civil Servants.

De facto we are bound by the outcome of National Joint Negotiation Forum (a negotiating platform comprising of all Civil Service unions) despite the fact that the legal instrument constituting it expressly excludes magistrates. We even did a comparison of salaries in the SADC region but the proposals could not be implemented because the Commission does not have a budget of its own under its control.

OTHER BENEFITS AND ALLOWANCES

ALLOWANCES

The Judicial Service Commission has been able to pay a retention allowance to every magistrate on a sliding scale as well as responsibility allowances to those in charge of Divisions, Provinces and stations. Whilst it is a welcome development, the levels currently being paid do not match our membership expectations.

Transport Policy

Currently only Regional Magistrates are entitled to a personal issue vehicle which they buy at book value after a certain period. They are also guaranteed a monthly allocation of fuel.

Housing Policy

It is currently non-existent be it acquisition of a personal house or institutional accommodation. There are no loans in respect acquisition of a personal house. Members have to fund themselves from their merge salaries.

Education policy – The Commission does not fund members' educational advancement whilst there are very stringent Manpower Development leave conditions for those who want to fund themselves.

The Commission does not assist in the education of children of magistrates or even offer loan advances to those in need.

Medical Aid

The majority of magistrates are on the most basic medical insurance offered by Premier Service Medical Aid Society. This is the second from the lowest package such that members are visited with huge shortfalls or asked to pay huge pre-service shortfall deposits.

Funeral Policy – The Commission is meeting all expenses for a member, a spouse and children. The parents of the members and their in laws are also catered for.

All the above show that in practice the environment for an independent judiciary has not been leveled. A lot of work still has to be done. In the light of the above as Magistrates Association of Zimbabwe we are engaging both the Ministry of Justice and Judicial Service Commission to craft legislation that will harmonize the Judicial Service Act and Magistrates Court Act with the Constitution of Zimbabwe and bring about the much needed judicial independence. Institutional and financial independence is not yet guaranteed.

As we speak there is in real terms a thin line between the executive and the judiciary.

THANK YOU

MAGISTRATES ASSOCIATION OF ZIMBABWE