

Joint Statement by Zambian Human Rights Lawyers in Support of Chief Justice Dr. Mumba Malila SC's position on the Rights of Gay Persons in Zambia

We, the undersigned human rights lawyers, write to express our solidarity with Chief Justice Mumba Malila who has come under extensive attack following his remarks about the need to respect the human rights of gay people in Zambia. On 22nd September 2023, Justice Malila delivered a public lecture at the University of Zambia as part of the events to mark the Silver Jubilee of the Supreme Court. During the lecture, he was asked a specific question about his view on the rights of gay people considering the national debate on the same. It was in this context that he shared his view that it is absolutely wrong to discriminate against gay persons and that they should not be afforded less rights as they do not lose their humanity by virtue of their sexuality.

Following this statement, News Diggers published a front-page story "Respect Gay Rights-Chief Justice" and an editorial "Chief Justice Malila's defence of gay rights is confusing", in which they criticize the Chief Justice. This has been followed by several statements on social media calling for the Chief Justice to vacate his office for expressing such a view.

As lawyers with an interest in human rights, we support the Chief Justice's view that gay people are entitled to all rights provided in the Constitution. These include freedoms of expression, assembly, and association, privacy, equality and dignity. These fundamental freedoms are enjoyed by all people, grounded on the principle of equality and non-discrimination, and elevated above the capricious whims of the majority. Therefore, gay people do not enjoy these rights as a gift from the majority but rather by virtue of being human.

A few case examples can illustrate this point. *The People v Paul Kasonkomona (2014)* dealt with the prosecution of an activist for soliciting for immoral purposes, following his TV appearance where he urged decriminalization of homosexuality in Zambia. Justice JZ Mulongoti, in the High Court, held that "the respondent's conduct of participating in a debate advocating for gay rights did not amount to soliciting for immoral purposes" and that "the respondent was exercising his right to freedom of expression ...".

The same approach was taken in Uganda in *Kasha Jacqueline and others v Rolling Stone Ltd and Giles Muhame (2010)*, when a newspaper published a list of suspected gay people and their residential addresses as means of stigmatizing homosexuals in the country. The Ugandan High Court considered this as a violation of the dignity and privacy of gay people.

In light of these judicial precedents and our own Constitution, we believe the Chief Justice simply stated the current position of constitutional rights in Zambia, echoing the basis on which rights are celebrated and enjoyed everywhere in the world.

Signatories to the Statement

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