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**ON THE OCCASION OF THE 2ND HIGH-LEVEL MEETING OF WOMEN
LEADER JUDICIAL OFFICERS OF AFRICA**

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**TITLE: JUDICIAL APPROACHES TO ADVANCING ECONOMIC
JUSTICE AND WOMEN'S EMPOWERMENT**

**THEME: THE MAPUTO PROTOCOL @ 20: CONSOLIDATING THE
JURISPRUDENCE OF EQUALITY FOR THE NEXT GENERATION**

INTRODUCTION

It is an honour to contribute to the 2nd High Level Meeting of Women Leader Judicial Officers of Africa on the important subject of judicial approaches to advancing economic justice and women's empowerment, under the theme "*The Maputo Protocol @ 20: Consolidating the Jurisprudence of Equality for the Next Generation.*" The theme invites reflection not only on the formal recognition of women's rights in law, but also on the extent to which legal and judicial systems are responding to the material conditions that continue to shape women's lives.

In commencing discussion on judicial approaches to advancing economic justice and women's empowerment, one observes that there exists, across jurisdictions, a discernible gap between the promise of formal equality and the lived economic realities of women. While many constitutional and legal frameworks affirm gender equality, many women remain structurally excluded from full participation in economic life. For present purposes, gender equality is understood not merely as equal treatment regardless of gender, but as the equal recognition, protection and

participation of all persons within legal and institutional frameworks, including through measures aimed at addressing historical and structural disadvantage and advancing substantive equality. That normative understanding informs the discussion that follows.¹ It also informs why the gap between the promise of gender equality and the lived reality of women compels a more deliberate judicial engagement with the concept of economic justice as a necessary foundation for meaningful empowerment.

Economic justice, properly understood and as discussed more fully below, concerns the fair distribution of resources, opportunities and economic benefits within society.² Women's empowerment, in turn, speaks to the expansion of women's real capacity to participate fully and effectively in

¹ The Oxford Review, 'Gender Equality: Definition and Explanation' (31 October 2024) <https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/gender-equality-definition-and-explanation/> accessed 18 March 2026.

² See United Nations General Assembly, *Declaration on the Right to Development* (adopted 4 December 1986) UNGA Res 41/128 art 8(1) <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development> accessed 16 April 2026. Article 8(1) links development to equality of opportunity in access to basic resources, education, health services, food, housing, employment and the fair distribution of income, making it a useful normative basis for understanding economic justice in terms of fairness in the distribution of resources, opportunities and economic benefits.

social, economic and public life. These are not mutually exclusive ideals. Instead, they are mutually reinforcing imperatives. Without access to economic resources and opportunities, the promise of empowerment remains largely illusory.

It is well appreciated that where women are denied access to property, inheritance, employment and productive assets, the enjoyment of constitutional rights is rendered fragile and incomplete. In such circumstances, formal equality does not mature into substantive equality. This has profound implications for the judiciary, which is called upon to interpret, apply and develop the law in a manner that responds meaningfully to the economic conditions that continue to undermine women's full enjoyment of rights.

As judicial officers and, in particular, as women within Judiciaries we are uniquely positioned to confront this gap. Through principled interpretation, the development of jurisprudence and the conscientious application of the law, courts serve as critical instruments in shaping economic realities and advancing substantive gender equality.

The paper, therefore, examines the ways in which economic justice may be harnessed to advance women's empowerment, with particular emphasis on the judicial function in translating constitutional guarantees into lived experience.

CONCEPTUAL FRAMEWORK

It is necessary, at the outset, to break down the main concepts that make up the subject under discussion. This helps to clarify what is meant by women's empowerment and economic justice, and to show how these ideas relate to the role of the judiciary in giving practical meaning to the promise of equality.

WOMEN'S EMPOWERMENT

In essence, "women's empowerment" denotes the process of providing women with the necessary resources and opportunities to exercise their rights, participate in decision-making processes and have control over their lives.³ Women's empowerment is a significant global issue, with

³ I. A Reshi & T Sudha, "Women Empowerment: A Literature Review" (2022) 2(6) *International Journal of Economic, Business, Accounting, Agriculture Management and Sharia Administration* 2. Available at:

many organisations and governments recognising the importance of gender equality in sustainable development.⁴ It therefore includes the ability to make independent economic decisions, equal access to productive resources and opportunities and meaningful control over income, property and other economic assets. This understanding recognises that empowerment requires more than formal rights. It requires the practical capacity to utilise those rights effectively within social and economic structures.

It may be noted that an allied concept to economic empowerment is that of economic independence. Economic independence is central to empowerment because economic dependence constrains autonomy in both private and public life. Where women lack access to resources, their ability to exercise constitutional rights, participate in economic activity

https://www.researchgate.net/publication/371243240_Women_Empowerment_A_Literature_Review/fulltext/647a2f4f2cad460a1bee345f/Women-Empowerment-A-Literature-Review.pdf?origin=publication_detail&tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uRG93bmxvYWQiLCJwcmV2aW91c1BhZ2UiOiJwdWJsaWNhdGlvbiJ9fQ&__cf_chl_tk=XWtQOZwWjv9y06sBWpsTfu49rnqJdiHO1Q5TrDyw_R0-1776251188-1.0.1.1-hlG67xUd5B6Yd2hpkmrgalalWidCjbUlzqBg_jN.jyk . (Accessed 14 March 2026).

⁴ *Ibid*

and influence decision-making is limited. Women's empowerment is therefore inseparable from gender equality.

ECONOMIC JUSTICE

Economic justice represents one of the primary routes through which equality becomes real, as it addresses structural barriers that prevent women from translating formal rights into lived experience. It can be understood as the principle of fairness reflected in sound public decision-making that ensures the equitable distribution of benefits among participants within an economic system.⁵ As Lalude notes:

“Economic justice encompasses the functions of individual rights and the implementation of inclusive economic policies which cannot be dissociated from legal concerns.”⁶

It follows from the above that economic justice demands that there should be equal access to resources, fair distribution of economic benefits and responsibilities and protection of rights relating to property, labour and

⁵ OM Lalude and A Fatehinse, 'Economic Justice and Judicial Structure: Realizing Economic Growth in Nigeria' (2020) 2(1) *Society & Sustainability* 25

https://doi.org/10.38157/society_sustainability.v2i1.53 accessed 14 April 2026.

⁶ *Ibid.*

livelihoods. Therefore, it focuses on whether legal and institutional arrangements enable equitable participation in economic life.

For a fuller understanding of economic justice, it is necessary to appreciate its relationship with gender equality. Economic exclusion is, in that sense, a gender equality concern because it entrenches structural inequality despite formal equality guarantees. Where women lack equal access to property, employment or productive resources, patterns of dependency are reproduced and participation in society is constrained. The absence of economic justice thus undermines substantive equality and limits women's empowerment.

CONSTITUTIONAL BASIS FOR ADVANCING ECONOMIC JUSTICE AND WOMEN'S EMPOWERMENT

In order to properly examine the relationship between economic justice, women's empowerment, substantive equality and the judicial role, it is necessary to begin with the constitutional framework. For that purpose, the Constitution of Zimbabwe, 2013, provides a useful foundation for discussing the connections between these concepts and the normative

basis upon which they rest. Section 56 of the Constitution guarantees the fundamental right to equality and non-discrimination, while section 80 affirms that women and men have the right to equal treatment, including equal opportunities in political, economic, cultural and social spheres. Section 17 further obliges the State to promote the full participation of women in all spheres of Zimbabwean society. These provisions establish equality not merely as a formal guarantee but as a directive for substantive inclusion.

The Constitution further protects specific economic rights that reinforce women's economic autonomy. Section 64 of the Constitution of Zimbabwe stands out as it protects freedom to choose and carry on a profession, trade or occupation, section 65 guarantees labour rights and section 71 safeguards property rights to everyone. In addition, section 26 requires equality of rights and obligations of spouses during marriage and at its dissolution, which directly affects control over family property and economic resources. These provisions operate together to form an integrated framework for economic autonomy and empowerment.

Regional and international instruments further reinforce this constitutional framework. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol requires States Parties, under Article 2, to combat discrimination through legislative and institutional measures. Article 13 recognises women's economic and social welfare rights, including equal pay for equal work, equal opportunities in employment and protection from exploitation. Article 19 links women's rights to sustainable development and access to productive resources, thereby situating economic empowerment within broader development goals.

Similarly, international frameworks such as the Convention on the Elimination of All Forms of Discrimination against Women, which obliges States to eliminate discrimination against women and to secure equality in political, social, economic and cultural life, and the Sustainable Development Goals, which recognise gender equality and women's economic inclusion as essential to sustainable development, underscore the centrality of equal access to economic opportunity. These instruments

are significant not only as normative commitments binding upon or guiding States, but also as interpretive resources that may assist courts in giving fuller content to constitutional guarantees of equality, dignity and non-discrimination. In that regard, courts may draw on them to interpret rights purposively, to expose the structural character of women's economic exclusion, and to develop jurisprudence that responds to the lived realities of disadvantage. Through such an approach, judicial decision-making does more than restate abstract commitments to equality. It helps translate constitutional and international norms into concrete protection for women's economic agency and thereby advances substantive equality.

THE ROLE OF THE JUDICIARY IN ADVANCING ECONOMIC JUSTICE AND WOMEN'S EMPOWERMENT

In constitutional democracies, the judiciary plays a central role in advancing economic justice and women's empowerment. Courts deliver economic justice directly through the interpretation and enforcement of

constitutional rights, including equality, property and labour protections.⁷

By invalidating discriminatory rules and practices, courts can remove barriers that impede women's access to economic opportunities and resources.

The judiciary also influences economic justice indirectly through the resolution of disputes in areas such as family law, labour relations and commercial transactions. Decisions in these matters shape economic outcomes, affect control over resources and establish precedents that influence institutional behaviour. Through both direct enforcement of rights and indirect shaping of economic relations, judicial decision-making contributes to improving women's economic position and advancing substantive gender equality.

The relationship between economic justice and women's empowerment is most clearly revealed in the everyday work of courts. This section

⁷ K. M Christopherson *et al*, 'Legal Rights: Women's Economic Empowerment' in *Gender Equality and Economic Development in Sub-Saharan Africa* (International Monetary Fund 2024) 2. Available at <https://www.elibrary.imf.org/display/book/9798400246968/CH012.xml#:~:text=Enshrining%20in%20countries'%20constitutions%20the,it%20discourages%20gender%2Dbased%20discrimination.> (Accessed on 14 March 2026)

briefly highlights some of the ways in which that relationship is realised in practice through judicial decisions affecting women's access to resources, recognition of contributions and participation in economic life.

(a) Property and inheritance

Control over property and inheritance remains one of the clearest indicators of economic agency. At its core, the inquiry is whether women are recognised as autonomous economic actors capable of owning, transmitting and benefiting from property on equal terms with men. Legal systems that deny women inheritance rights or security of tenure particularly under customary law, perpetuate structural dependency and entrench gender inequality.

Conversely, economic justice is advanced where courts interpret and apply the law in a manner that affirms women's equal entitlement to property. Within the constitutional framework of Zimbabwe, this approach finds support in section 17(1)(c) of the Constitution of Zimbabwe, which provides that the state must promote full gender balance in the Zimbabwean society and in particular, the State and all

institutions and agencies of Government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men. Further support is found in section 71(2) of the Constitution of Zimbabwe, 2013, which guarantees every person the right to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property. Read together with section 56 of the Constitution of Zimbabwe, 2013, which prohibits discrimination on grounds including sex, gender and marital status, these provisions establish a constitutional basis for understanding women's equal access to property and productive resources as an essential component of substantive equality.⁸

The Judiciary, therefore, bears a critical interpretive responsibility in harmonising customary law with constitutional principles, ensuring that cultural practices are developed and applied in a manner consistent with fundamental rights. Properly understood, the protection of women's

⁸ Vengesai, P. The rights of women in unregistered customary marriages in Zimbabwe. *Law, Democracy & Development*, v. 28, 2024, p. 224. Available at: <https://journals.co.za/doi/epdf/10.17159/2077-4907/2024/ldd.v28.10>. Accessed on: 15 Apr. 2026.

inheritance and property rights transcends private law concerns and assumes the character of a constitutional imperative, one that directly enhances women's economic independence, dignity and long-term security.

(b) Marital Property and the Family Economy

A second and equally significant site of economic justice lies within the family, particularly in the distribution of matrimonial property upon divorce. This raises the fundamental question of how the law recognises and values women's contributions within marriage.

Historically, legal frameworks privileged direct financial contributions, often to the detriment of women whose labour is predominantly unpaid and domestic. A constitutionally aligned approach, however, recognises that caregiving, household management and other non-financial contributions are integral to the accumulation of wealth within the family unit.

In Zimbabwe, this principle is reflected in section 7 of the Matrimonial Causes Act [*Chapter 5:13*], which empowers courts to make equitable

distribution orders upon divorce. Judicial interpretation has increasingly evolved to recognise both direct and indirect contributions, thereby transforming what has traditionally been regarded as “invisible labour” into legally cognisable economic value.

This sensitivity to the economic value of women’s domestic and caregiving labour is reflected in Zimbabwean case law. In *Usayi v Usayi* 2003 (1) ZLR 684 (S); SC-11-03, the Supreme Court rejected the narrow view that a spouse who had made no direct financial contribution to the acquisition of matrimonial property was therefore entitled to only a limited share. Instead, the Court recognised the profound economic significance of unpaid domestic work, asking at p. 9 of the typewritten judgment:

“How can one quantify in monetary terms the contribution of a wife and mother who for 39 years faithfully performed her duties as wife, mother, counsellor, domestic worker, house keeper, day and night nurse for her husband and children?”

The Supreme Court ultimately upheld an award of a 50 per cent share of the sale price of the matrimonial home to the wife. The decision is significant because it demonstrates judicial sensitivity to the reality that

women's contributions to family wealth are often made in non-monetary forms and that substantive equality requires those contributions to be given real legal value.

This approach gives practical substantive effect to section 26 of the Constitution, which affirms equality of rights and obligations of spouses during marriage and at its dissolution. In this way, courts not only resolve private disputes but also reshape the economic realities of women by ensuring that they do not exit marriages in conditions of unjust impoverishment despite years of contribution.

(c) Judicial Sensitivity to Legal Gaps

Another important judicial approach to advancing economic justice for women lies in the recognition of legal gaps and structural injustice. Courts do not promote economic justice only by granting direct relief or by developing rights in expansive terms. They may also do so by identifying situations in which the law fails to respond adequately to women's lived realities, particularly where that failure exposes them to economic vulnerability. In such cases, judicial sensitivity consists not in applying

the law beyond what it actually provides, but in articulating the injustice produced by legal silence, inconsistency or incompleteness, even where the ultimate correction may require legislative intervention.

This approach is illustrated by *Marange v Chiroodza* 2002 (2) ZLR 171 (H). In that matter, the court drew attention to the unequal and uncertain position of women in unregistered customary unions, by observing at pp. 173-174 that:

“The issue surrounding the matrimonial property regime attaching to unregistered customary unions arises from the fact that our general law has been most ambivalent in the way that it treats unregistered customary unions. For some purposes, the parties to the union are regarded as married persons and are accorded the rights and obligations that the law grants to or imposes on married persons. For others, the parties to such unions are regarded as unmarried. By design or through an oversight, the law has not made any express provision for the distribution of the property of persons in such unions when their unions terminate other than through the death of one of the parties.”

The court then underscored the practical injustice that such a position creates in forceful terms at p. 175A-B:

“Further, having given limited recognition to the union during its subsistence, it makes a complete ass(**mockery**) of the law for it to suddenly turn blind and fail to recognize the parties when the union

terminates on the pretext that the law has no express provision on how to distribute the estate of such person. In my view, in such an instance when it fails to provide the remedy to correct an obvious injustice, the law then removes itself from the people and fails to be a reflection of the mores and values of the society it seeks to serve. It risks being ignored as alien.”

The significance of the decision for present purposes lies in its recognition that women’s economic vulnerability may be deepened not only by discriminatory rules, but also by gaps in the law that deny protection at the point of greatest need. It therefore provides a useful example of a judicial approach that advances economic justice by exposing structural injustice and signalling the need for legal reform.

(d) Labour Relations and Professional Participation

Women’s empowerment is further shaped by judicial approaches to labour rights, access to professions and participation in the broader market economy. The central issue here is whether women are able to engage in economic activity on equal, fair and dignified terms.

In Zimbabwe, the dimension is constitutionally grounded in sections 64 and 65 of the Constitution, which protect the freedom to choose a

profession and guarantee labour rights, including fair and safe working conditions. Economic justice in this sphere requires courts to actively guard against discrimination in employment, unfair dismissal, exploitative labour practices and structural barriers that limit women's participation in certain sectors. The Maputo Protocol recognises women's right to equal access to employment, fair wages and working conditions, and explicitly requires states to eliminate discriminatory practices in the workplace.⁹

From a practical standpoint, judicial enforcement of these rights helps to ensure that women are not shut out of opportunities to earn an income or forced into insecure and poorly protected forms of work. Moreover, decisions in this domain have a multiplier effect. By securing fair wages and equitable working conditions, courts contribute to women's financial autonomy, household stability and broader socio-economic participation.

The Judiciary, thus, operates not merely as an arbiter of disputes but as an enabling institution for women's sustained engagement in both the formal

⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol"), art. 13.

and informal economy. Economic participation without equality is not empowerment, it is vulnerability.

(e) Commercial Disputes

Further, economic justice must also be understood within the context of everyday commercial and livelihood disputes, many of which are not explicitly framed as gender issues. This includes disputes involving informal traders, small-scale entrepreneurs, family businesses and access to markets.

The critical insight in this regard is that ostensibly neutral economic disputes often produce disproportionately gendered outcomes, given the dominance of women in informal and vulnerable sectors of the economy. Judicial reasoning that is attentive and sensitive to context can significantly influence women's economic realities.

Decisions relating to contractual enforcement, access to trading spaces or regulatory compliance may determine whether women are able to sustain livelihoods. In this sense, economic justice operates indirectly: courts empower women not necessarily through explicit invocation of gender

equality, but through consistent application of fairness, proportionality and access within economic systems.

Viewed holistically, the Judiciary's contribution to women's empowerment is both direct and systemic, cutting across multiple areas of law and everyday realities of economic life.

Further, the practical impact of judicial reasoning on women's economic empowerment is most effectively illustrated through case law. Zimbabwean jurisprudence reveals a trajectory marked by both regressive and progressive tendencies. Regrettably, not all judicial approaches have advanced women's rights. But these judgments are reminders of how judicial decisions impact upon economic justice and the empowerment of women.

Magaya v Magaya S-210-98 stands as a cautionary example of judicial deference to discriminatory customary norms, illustrating how courts may inadvertently entrench women's economic exclusion. The dispute arose after Shonhiwa Magaya died intestate. His eldest child, Venia Magaya, had initially been appointed heir by the community court, but that

appointment was challenged by her younger half-brother, who argued that under the applicable customary law a female child could not succeed as heir in preference to a male child. In resolving that dispute, the Supreme Court adopted a deferential approach to customary succession rules and viewed its role as one of applying, rather than reforming, the customary law as it understood it. It was in that factual and legal context that the court gave the following conclusion:

“In my view, all the courts can do is to uphold the actual and true intention and purport of African customary law of succession against abuse ...”¹⁰

The decision has been widely criticised for reinforcing patriarchal norms and legitimising women’s economic exclusion. It stands as a stark illustration of how judicial deference to discriminatory customary practices can undermine constitutional values and entrench inequality.

By contrast, a more progressive trajectory is reflected in *Bhila v The Master & Ors* 2015 (1) ZLR 762(H) at p 770D, which is often regarded in Zimbabwean legal scholarship as a significant step toward equality in

¹⁰ *Magaya v Magaya* S-210-98 at p. 19.

succession law. The decision affirmed the inheritance rights of children born out of wedlock. The decision signalled a broader judicial willingness to dismantle exclusionary family-property rules and align the law with constitutional principles of equality and fairness. In South Africa, the Constitutional Court in *Bhe & Others v Magistrate, Khayelitsha*, 2005 (1) SA 580 (CC) developed the principle that customary law rules excluding women from inheritance violate constitutional equality and dignity and that customary law must be developed consistently with the Bill of Rights.

By contrast, *Katekwe v Muchabaiwa* 1984 (2) ZLR 112 (SC) is an exemplary judgment in the development of women's legal and economic agency in Zimbabwe. In that case, the Supreme Court rejected the continued treatment of an adult woman as remaining under the proprietary control of her father for purposes of a customary law claim for seduction damages. Instead, the Court affirmed that the Legal Age of Majority Act had fundamentally altered women's status by removing the legal disabilities associated with perpetual minority. Its reasoning was stated in clear and powerful terms at p. 126 thus, "The courts must hold that under

present circumstances absolute equality between men and women must prevail.” The significance of the decision for present purposes lies in its recognition of women as autonomous legal persons capable of asserting their own rights, a position that strengthens the juridical foundations of economic independence and empowerment.

Equally significant, and as already discussed above, is the evolving body of jurisprudence under section 7 of the Matrimonial Causes Act. Courts have increasingly recognised both financial and non-financial contributions in determining equitable distribution upon divorce. This line of authority is critical for women’s economic justice, as it determines whether women retain a fair share of assets accumulated during marriage.

The field of labour and professional access, which is grounded in sections 64 and 65 of the Constitution, remains a developing but critical area. Judicial decisions in this domain hold significant potential to address systemic inequalities in employment and economic participation, particularly in cases involving gender discrimination and workplace equity. Taken together, these cases underscore a central point: the

judiciary is not merely an arbiter of disputes, but a pivotal actor in shaping the economic realities of women, either by reinforcing marginalisation or by advancing substantive equality.

CONCLUSION

Women's empowerment cannot be achieved in the absence of economic justice. Access to property, inheritance, employment and participation in economic life and activities determines whether women are able to exercise their rights on an equal footing with men. Although the Constitution of Zimbabwe and international instruments provide strong guarantees of gender equality, these guarantees remain incomplete unless they are translated into substantive economic outcomes. The judiciary therefore plays a crucial role in bridging the gap between formal equality and lived reality by interpreting and applying the law in a manner that dismantles structural barriers to women's economic participation. Through gender-sensitive jurisprudence in areas such as property, family law, labour and commercial disputes, courts contribute to strengthening women's economic agency and promoting substantive equality.

Ultimately, advancing economic justice is essential to achieving gender equality, as it ensures that women are not only recognised as equal before the law but are also empowered to participate fully and meaningfully in economic and social life.

I THANK YOU!