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“Lawyers as Entrepreneurs and Leaders in Business”

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“Lawyers as Entrepreneurs and Business Leaders”

Approach:

- 1. Introduction**
- 2. The Difference between Entrepreneurs and Lawyers**
- 3. The road I had to travel**
- 4. Lawyers as Entrepreneurs and Business Leaders**
- 5. Concluding Remarks**

1. Introduction

-The President, Law Association of Zambia, Members of LAZ, Distinguished participants, Fellow presenters, Ladies and Gentlemen-all protocols observed:

-It is a great pleasure, privilege and honor to address you my fellow learned friends, 30 years from the year when I was called to the great Bar of Zambia, and yet having been manifestly absent from the pursuit of the learned profession as a consequence of my pursuit of another noble endeavor, namely banking and subsequently entrepreneurial undertakings on a pan-African level.

-It was in the year 1982 that after completing my law practice studies and being called to the Bar, I joined Citibank Zambia Limited, as an Executive Trainee, but more on that later.

-The topic to which I am called to address you on is “Lawyers as Entrepreneurs and Business Leaders”. The subject of lawyers as entrepreneurs and business leaders is one that calls to mind the importance of law and lawyers, the rigor and flexibility of the legal training they undergo, and therefore their ability to succeed and excel whether as leaders practicing law in the profession or more widely as business innovators and leaders.

-I intend to undertake the discussion of this topic by first delving into the definition of entrepreneurs and lawyers and how they think differently, then briefly discussing the road I had to travel, and round up with my own thoughts on lawyers as entrepreneurs and business leaders before providing my concluding remarks.

2. The Difference between Entrepreneurs and Lawyers

An entrepreneur is defined by the Merriam Webster dictionary as “a *person who organizes and operates a business or businesses, taking on financial risk to do so.*”

-We will concurrently take judicial notice that this august gathering is familiar with the definition of a lawyer, so I will not belabour this (it is not as Lord Brougham put it that “a lawyer is a gentleman who rescues your estate from your enemies and keeps it for himself”, or as some enemies of our noble profession would have others believe that the “only difference between a lawyer and a herd of buffalo is that the lawyer charges more”)!)

-In the Webster definition of the entrepreneur, the dictionary is not too different from the daily business which those of you lawyers in private practice undertake, namely you operate businesses, and take on financial risk in doing so.

-There is a comfortable umbrella provided in this regard by legislation such as the Legal Practitioners Act as well as the Law Association of Zambia and its regulatory and ethical guidelines, so that there is enough precedent in terms of best practice for such an undertaking.

-The real issue is when the lawyer embarks upon the road less trodden, on an entrepreneurial undertaking outside his profession and with little by way of precedent to guide him.

-Richard Goosen in his article “What Entrepreneurs and their Lawyers should know about each other”, has stated that inter alia, a principal distinguishing factor in the approach to business as taken by entrepreneurs and lawyers emanates from *the differences between the entrepreneurial and the legal sub-culture*.

As he puts it:

“to manage it [i.e. the sub-culture] is to recognize, understand and proactively respond to the sub-culture of the legal profession, which clashes with that of the entrepreneur”.

-In this regard, Goosen defines culture as the *system of shared values and norms* in a group constituting a design for living. Values are “those *ideas which the group believes* are good, right and desirable”, whereas norms are

the social rules and guidelines based on values which guide appropriate behaviour in particular situations.

-Students of entrepreneurship accept the notion that there is an “entrepreneurial mind” or “personality” and its values and norms *constitute an entrepreneurial sub-culture, just as there is a legal sub-culture*, reflected in the objective of law schools to have their graduates “think like lawyers”.

-As a consequence of the different sub-cultures, lawyers and entrepreneurs have different ways of resolving issues, and Goosen highlights these in 4 particular regards, namely; *how they think, how they communicate, how they focus and how they find solutions.*

-I further elaborate upon Goosen’s 4 elements of the sub-culture and take some liberty in providing some of my own empirical poetic licence.

(i) How they think (Nature of the thinking process):

-Legal training focuses on *what can go wrong rather than what will go right*. The result is the lawyer focuses on seeing potential negatives in a business transaction;

-While lawyers see what can go wrong, *entrepreneurs focus on what can go right* (typical glass half-empty, half full conundrum). An entrepreneurial mindset requires and nurtures a *positive attitude, perseverance and emotional management* (necessary against set-backs).

-Most entrepreneurial education is from the “school of hard knocks”; values and norms of entrepreneurial sub-culture are *reinforced by business media canonizing success stories.*

-Entrepreneurial successes rarely occur in *a methodical, linear manner* (as is the logic of law), and often involve *action before analysis* (though continuing success is strengthened by well thought out business strategies).

-Entrepreneurs gain sustenance from a *psychological disposition*, whilst lawyers are more rooted in *technical aspects*. Per Goosen: “the emotional lure of entrepreneurship will overshadow rational concerns-*emotion and adrenalin rush are ..[a] stock in trade.*”

ii) How they Communicate:

-Lawyers communicate in a *detailed, technical manner, often in writing*. They are comfortable communicating in writing and prefer a paper trail. Entrepreneurs prefer *communicating in person* and to a great extent delegate details to a professional advisor (legal, financial). They prefer to deal in person and hash things out.

(iii) How they Focus

-Lawyers are *process oriented and focus on getting the job done*, with fees paid regardless of whether the transaction works. Focus is on process (what-ifs in legal opinions and advice and lengthy comments on documentation), creating a perception to entrepreneurs of being “deal-killers”.

-Entrepreneurs *focus on business mechanics and are more results oriented*. They have a big picture focus on whether the transaction makes money and on-going relationship possibilities.

(iv) How they find Solutions

-Lawyers *provide solutions based on legal avenues* to client problems (legal documentation governing transaction, legal steps). This approach may not consider all the dynamics of an issue and the best way to solve the problem. For entrepreneurs, the *law is only part of the solution* and they will often adopt a multi-dimensional approach based on *relationship, extenuating circumstances, possibility of miscommunication and possibility of misunderstanding*.

-The legal and entrepreneurial sub-cultures differ in the several ways identified in the foregoing, and this also affects their approaches to doing business and resolving problems. In this regard:

- É Lawyers bill for their time and provide value by selling their services. Hence they value time, orderliness and a predictable return on their investment.
- É Entrepreneurs embody the anti-thesis of this approach; they embrace risk as a by-product of their existence-a fine line

separates success and failure. However good entrepreneurs view themselves as *risk assessors and not risk-takers*.

-In summing up Goosen asserts:

“Lawyers are risk averse in their legal practices and their investment endeavours. They have little interest in rolling the dice and they are not skilled at assessing the risks. In fact, the nature of the profession fosters individuals who are risk averse. As one lawyer friend of mine puts it to his entrepreneurial clients-”I don’t get paid to take risks-you do. I am not here to buy into your dream. You just pay me for what I do.”

-The challenge of our law school curriculum is to strike the fine balance between exposing our lawyers at early stages to the entrepreneurial or business thought process whilst embedding the values and norms customary to the noble profession. As Steve Blank puts it in his article “Why Lawyer’s don’t run Start-Ups (and why Entrepreneurs hate Lawyers)”:

“if you find a lawyer who talks solutions and not problems, hold on to him.”

3. The Road I had to Travel

It was no wonder given this risk averse disposition fostered by my legal training that my entrepreneurial road began with a journey in an industry considered similarly risk averse: banking.

-I joined Citibank as an executive trainee in October 1982 with the objective of being internal legal counsel. Citibank’s idea however was to turn me from a lawyer into a banker and after the mandatory 6 months on the job training, I was sent in 1983 to the Middle East Africa training Centre in Greece for another 6 months in core banking training.

-On my return to Zambia (and in order to combine my legal skills with the recently acquired banking training), I was appointed to head the Credit Administration Department overseeing both the risk administration and compliance areas.

-As Credit Administration is the engine room for managing bank credit portfolio risk this experience honed my skills in assessing risk, and managing risk by the use of well structured risk mitigation approaches and techniques.

-Subsequently at Citibank Zambia and through various assignments in Athens, London, New York, Paris, Milan, Istanbul, Jordan, Bahrain, Ivory Coast, Tunisia and finally Kenya, I gained eventual promotion to the first Zambian Vice President in the Africa region.

- During this time I functionally worked on Citibank's treasury, corporate bank and financial institutions desk until October 1992, when I left with 3 other colleagues to explore my entrepreneurial urgings which resulted in the founding of the Loita Group.

-In founding the group my 3 colleagues and I sought to exploit an opportunity that we saw between the *demand for international financing from African exporters, private and state owned banks, development banks and central banks* matched against the necessity for well structured risk that capital suppliers in the US and Euro markets demanded;

- When taking the entrepreneurial step, the group was started up with *zero tangible capital* but sought to use *full intellectual sweat capital* relying on the principal strength of combined historical experience (structured financing, banking operations, technology) and the number of African markets covered by the 4 of us (21 countries);

-We *packaged and commoditized the experience and markets* and used a 3 page paper to sell the opportunity to Hong Kong and Shanghai Banking Corporation (HSBC) who had a pan African merchant bank (Equator Bank) seeking to expand its activities;

-HSBC facilitated the set up of an offshore Special Purpose Company (SPC-100% owned by ourselves), which entered into a contract (i.e. “the Sweat Capital”) to procure our exclusive individual services in the area of structured trade and project finance, IT services and presence management;

-The contract provided for a quarterly retainer fee and success fees (on a profit sharing basis netting out our costs), against an aggressive 3 year gross financial target. In the event the gross financial target was achieved earlier than 3 years, an incentive to exit the contract and operate as an independent SPC was provided for.

-Targets were achieved in 18 months, success fees paid and a fully capitalized independent group started with its HQ in Mauritius and principal office in Kenya, focusing on financial and financial IT services (Loita Capital, Fintech International, Loita Transaction Services);

-The group has grown from 4 to 400 people and at one time operated in over 15 African countries (against 9 presently) with administrative HQ in South Africa;

-It has successfully advised on, structured, arranged and placed transactions from the African markets in global financial centres with a *value in excess of US\$ 3Bn* since inception;

-It has *pioneered the first issue of bonds by the EADB and PTA Bank* on the stock exchanges of Kenya, Uganda and Tanzania;

-It has been involved in the successful establishment and restructuring of:

**Finance Corporation of Malawi* (a government owned merchant bank successfully privatized to Nedbank of South Africa);

**BACAR* (the first indigenously owned Rwandaise commercial bank on behalf of the Central Bank of Rwanda, management services and privatized to Fina Bank of Kenya);

**BPC Angola* (the largest commercial bank in Angola; establishment of the first Structured Finance Unit);

***Versus Bank Ivory Coast (help establish and provide management support for this wholly indigenously owned bank)**

***Finance Bank Zambia (management restructuring and 40% equity sold to Credit Suisse);**

***Ecobank Malawi (established as Loita Investment Bank and restructured as a commercial bank in joint venture with Ecobank Transnational) and**

***Afrasia Bank Mauritius (20% equity, since sold: the first bank in Mauritius focused on Asia and Africa).**

4. Lawyers as Entrepreneurs and Business Leaders

The Group is 20 years this year. Some of my thoughts on key aspects of the legal sub-culture to my own entrepreneurship which could be of general application are as follows:

(i) Nature of the Legal Thinking Process and Focus:

- The lawyer's *process orientation risk adversity and focus on getting the job done* has provided a strong base for *sober and measured entry* into business focusing on what can go wrong;

-My own key adaptation in the entrepreneurial sphere has been to emphasize *risk assessment and mitigation*, not merely risk adversity;

-The discipline of *structured logical thinking* has proven highly useful in *structured financing initiatives* we have undertaken;

-Whilst pursuing the "adrenaline rush of the deal", my legal disposition has nonetheless kept me rooted in *technical aspects and rationalised approaches*.

(ii) ***Communication***

-the legal disposition of “communicating in writing” has been most useful in turning useful ideas into structured opportunities, through succinct information memoranda (e.g. the HSBC Equator transaction).

(iii) ***Balancing Legal and Entrepreneurial Thinking***

-Nonetheless there have been key elements of the entrepreneurial sub-culture which I have imbibed and cherished, embracing risk as a by-product of this existence.

-Lawyers as proven by the cases of Mining and Business Entrepreneurs (such as Patrice Motsepe, Cyril Ramaphosa, Wila Mungomba, Ndumiso Mamba), yours truly and many others are therefore capable of leveraging the legal sub-culture to succeed in entrepreneurial endeavours.

5. Concluding Remarks

In concluding, I wish to leave you with a few thoughts. The Georgetown University Career Education Centre states the obvious as follows:

“All lawyers are not alike...lawyers work in various capacities (legal and non-legal) and often specialize in particular areas...”

(i) ***As the Zambian economy continues to grow, specialization will present entrepreneurial opportunities beyond those presently conceived. Specialization in areas such as Taxation, Bankruptcy, Environment, Healthcare and Entertainment Law will be the natural result;***

(ii) ***We must assume that a society’s legal structures mirror its socio economic developments and therefore LAZ must remain alive to this specialization dynamic and the required response (for instance the deputy Finance Minister’s recent challenge on the Eurobond Issue);***

(iii) *General entrepreneurial opportunities will also position lawyers as 'early responders' given the breadth of their training. Additionally, lawyers should not shy away from a sabbatical from the practice of law in order to better pursue these opportunities;*

(iv) *Legal training must infuse a deeper business curriculum to expose our lawyers to business and entrepreneurial theoretical frameworks, mind sets and sub-cultures;*

(vi) *To better position lawyers as future entrepreneurs and business leaders, there may be a necessity on a wholesale level, to rethink the approach to legal training (perhaps consider the US model, where law training commences after the attainment of a first degree)?*

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Acknowledgements/ References

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