

**ADDRESS BY THE PRESIDENT OF THE COURT AT THE
OPENING OF THE JANUARY 2020 SESSION OF THE
COURT OF APPEAL**

Your Lordships and Ladyship, members of the Bar, welcome to the January session of the Court of Appeal. I wish you all well for the New Year and trust that 2020 will prove to be year of plenty, and also a year of peace in Botswana in an otherwise turbulent world.

2019 was a busy year for the Court when many important and contentious appeals were heard and determined on such diverse subjects as the rights of asylum seekers, controversies in the Trade Union movement, consequences of the Foot and Mouth Disease outbreak to cattle farmers, and disputes in the run-up to the 2019 National Elections, which were held on 23rd October 2019. Four full sessions of the court were successfully concluded, and also four

application sessions, as well as a number of expedited appeals and urgent applications.

We are grateful that despite the national elections being hard-fought and sometimes contentious, the country's tradition of peaceful elections was upheld and the process was conducted, as usual, with patience and good humour.

This notwithstanding, the election has been unusual in one respect and that is that it has been followed by no less than twenty three election petitions brought by unsuccessful candidates in the national and local government elections – far more than the norm – despite the hard work put in by the Independent Electoral Commission in conducting the registration and polling processes. Owing to their importance, the petitions were heard by specially constituted three judge panels of the High Court, which sat in Gaborone

(in the case of two panels) and in Francistown (in the case of the remaining panel). Expeditious decisions were handed down or are to be handed down in all cases, and applications for an expedited appeal in each of the concluded cases were granted by this Court earlier in the week. Since the issues raised are similar in nature, counsel have agreed to the consolidation of the appeals, and a five judge bench has been assembled to hear these in the double court on Wednesday 29th January 2020 at 9.30 am.

In the course of a single week in November last year, I received two unwelcome pieces of news, which affect the present and future composition of our Court of Appeal.

The first was from Justice Fritz Brand, who informed me that his Doctors had diagnosed an aneurism in his leg, which required urgent surgery. This would make him unavailable

for this January session as he will be (and is) undergoing compulsory convalescence following his operation. I have been in contact with Justice Brand and am happy to inform you that the surgery was successful. He is out of hospital and well on the way for full recovery. I look forward to welcoming him back for the July Session. I also welcome back Justice Monametsi Gaongalelwe after his successful knee surgery. I thank Mr Justice Tafa for kindly agreeing to stand in for Justice Brand during this January session.

The second piece of unwelcome news came from Mr Justice Louis Harms, who has only served with us for one full session, in July 2019. Owing to personal challenges, he is no longer able to attend two full month long sessions in Botswana each year away from his family, and has tendered his resignation with effect from the end of the present session. He has also apologized for his absence from this

roll-call, but will be present to attend to his listed appeals from Monday onwards. Justice Harms is a valuable member of the court, and his wisdom will be missed.

In terms of the current policy of the Judicial Service Commission, which is to retain for the present the ratio of six citizen Justices to three visiting Justices, I have, in consultation with the Chief Justice and other colleagues, sought a replacement from among distinguished members of the South African Constitutional Court, the Supreme Court of Appeal of that country and elsewhere, who have either recently retired from the bench or are due to do so shortly. Apart from adding value, the visitors demonstrate the objectivity of our Court, since Botswana is a small and close society where all Judges have family and other connections countrywide. It is agreed by stakeholders that they enhance the image and status of the Court of Appeal.

Our two preferred candidates were the former Chief Justice of South Africa, Mr Justice Sandile Ngcobo, and Justice of Appeal, Mr Justice Eric Lorimer Leach, both of whom came highly recommended from that jurisdiction. Of these, we have been fortunate to obtain the services of Mr Justice Leach who is due to retire in April of this year, and will be honoured to serve as from the July session of the court.

Justice Leach is sixty seven years of age and is in good health. He has been a Judge for twenty six years, the last eleven of which have been in the Supreme Court of Appeal of South Africa, where he has distinguished himself. Since his appointment to that court, over a hundred of his judgments have been published in the South African Law Reports, including that in the well-known Oscar Pistorius murder appeal.

Justice Leach is the author of a book on civil procedure and is a specialist in a number of fields of law which would qualify as scarce skills in our jurisdiction. These include Banking Law, Income Tax, Mining Law, Trademark Law, and Land Law. His judgment writing skills are also recognized as being of the highest order. I have no doubt he will be an asset to our court, and he has been duly recommended for appointment by the Judicial Service Commission.

I will keep these remarks brief as we have a busy session ahead of us, and there are criminal appeals to be heard later this morning after Roll-call. As usual, appellants in criminal appeals need only to rise to acknowledge their presence when their matters are called, and need not come up to the dock. They will be permitted to leave the court before the Civil Roll is called. I thank you.

We will now proceed to the calling of the Roll.

I.S. Kirby
President of the Court of Appeal
10th January 2020