



**THE LAW SOCIETY OF BOTSWANA**



**ADDRESS BY**

**MR. LAWRENCE MOAGISI LECHA**

**CHAIRMAN OF THE LAW SOCIETY OF BOTSWANA**

**AT THE CEREMONY OF THE OPENING OF THE  
LEGAL YEAR 2014**

**4TH FEBRUARY 2014**

**HIGH COURT, GABORONE**

## **1. Salutations**

His Excellency the President of the Republic of Botswana, Your Lordship the Chief Justice, the Honourable Speaker of the National Assembly, My Lords the Judge Presidents of the Court of Appeal and the Industrial Court, My Lords and Ladies Judges of the High Court and the Industrial Court, Honourable Members of Parliament, Honourable Attorney General, Your Worships of the Magistracy, His Honour the Chairman of Ntlo Ya Dikgosi and President of the Customary Court of Appeal, Members of the Diplomatic Corps, Distinguished Ladies and Gentlemen, last but definitely not least my learned friends at the Bar, I greet you all.

## **2. Stakeholder Engagement**

2.1 As it is common cause to everyone here present, the Law Society of Botswana is a major stakeholder in the processes, administration and dispensation of Justice in our Republic. It is for this reason that the Society will from time to time engage with all stakeholders on matters that in its view impact on the delivery of Justice and the Rule of Law in Botswana.

2.2 The Society takes its role seriously and in this regard will continue to raise the same issues each year until these are addressed. You will therefore ladies and gentlemen bear with us if we seem to be raising issues that you have heard before.

2.3 At the Opening of The Legal Year last year we noted with concern that there is a perception in the public domain that relations between the Society and the Bench are somewhat strained and we committed to addressing this perception.

2.4 I am happy to report that stakeholder engagement between the Administration of Justice, led in most part by His Lordship the CJ himself, and the Law Society of Botswana has continued in the past year. The issues therefore that will be raised today have been discussed with Administration of Justice with

different levels of resolution. I am however hopeful that as we continue to engage more issues will be resolved and therefore not become a subject to future forums such as this one.

### **3. Relations between the Bench and Bar**

- 3.1 This issue has been raised before and the Society seeks to emphasise that respect between these parties is critical for delivery of justice and perceptions relating to same.
- 3.2 It is important to raise it again this time for it has in the past year reared its ugly head to the discomfort of the Law Society of Botswana. In the year 2013 we have witnessed some Magistrates, especially the junior ones, becoming bullies to legal practitioners, litigants and members of the public.
- 3.3 The media has on a number of occasions reported on the harassment and even detention of members of the public by Magistrates who seem to be drunk with power. These Magistrates have developed a tendency to issue Warrants of Arrest willy-nilly against all and sundry, be it legal practitioners, prosecutors, witnesses and even innocent members of the public who visit the courts. I stand here today as a victim of such warrants of arrest, and on two occasions for that matter. In one instance a warrant of arrest was issued against my person by a Junior Magistrate because I, in my capacity as the Chairman of the LSB, had to attend a crucial meeting with the Honourable Chief Justice and requested to be excused from this magistrates court for the meeting but was nonetheless issued with a warrant of arrest whereto is was ordered that "Mr Lecha should be arrested and detained and be brought to my court to explain why he chose to attend the Chief Justice's meeting over my court". The Warrant of Arrest was issued despite my having requested a postponement several days before such court date and proffered an apology to both the Court and my learned friend on the other side in order to attend this crucial meeting.

- 3.4 I am loath to say that our learned friends at the DPP have also not fared any better with these Junior Magistrates and some have suffered similar or worse fate from these overzealous Junior Magistrates. My choice of the term Junior is deliberate.
- 3.5 These Junior Magistrates, and there is a good number of them, set dates of hearing and don't show up at court on the day of the trial or at times come to court hours late and do not bother to even proffer any excuse or apology. This is obviously at great cost to the litigants from both sides. God forbid if it is the litigants who do not attend or come late for court, he or she would become a guest of the State with immediate effect.
- 3.6 This behaviour I have alluded to above shows in large measure that these Junior Magistrates who behave in such manner lack the requisite character traits of a Judicial Officer. This is but one more reason why appointment of Judicial Officers especially High Court Judges should be done in a transparent manner in order to avoid those with known deficient character traits ending up on the Bench.

#### **4. Forum Shopping**

- 4.1 At the Opening of the Legal Year in 2012, my predecessor, Ms Chilume, stated that the Society was concerned that the ineffective or below par performance of some High Court Judges was leading to Forum Shopping. At that time the Law Society was again addressing the issue of appointment of Judges and sought to persuade stakeholders that it was the appointment of undeserving persons to the Bench that was leading to this generally undesirable practice.
- 4.2 It was indeed a shock when the Law Society learnt of His Lordship the CJ's circular that sought to condemn in very strong terms the practice of Forum Shopping with a suggestion that bribery was the root cause.

- 4.3 During previous engagements there had been no indication that this concern of forum shopping was linked with bribery of Judges and Registry staff by legal practitioners but was more to the ineffectiveness of some of the Judges. To date no evidence has been provided to back the suggestion of bribery. Indeed His Lordship the CJ has retracted the allegation as made with respect to the Judges, the same should apply with legal practitioners, otherwise who are the practitioners bribing? It is noteworthy to say that those in the Bench at the Lobatse High Court share our views.
- 4.4 The Law Society is quite concerned that while there is this discussion on Forum Shopping and the pointing of fingers at legal practitioners and by extension public litigants there is very little mention of perceptions of Forum Shopping in matters where Government is a litigant. Examples however are many.
- 4.5 Care needs to be taken that all measures that are being undertaken to enhance transparency at the High Court such as electronic allocation of cases should similarly be employed at the Court of Appeal as this is the last point where a litigant gets closure of his matter. In this respect the Law Society finds the provision in the new Rules of the Court of Appeal that states that allocation of cases will be at the sole discretion of the Judge President as somewhat regressive and contrary to attempts at transparency in our judiciary.

## **5. Outstanding Issues**

The Law Society wishes to state for the record that the following issues remain unresolved:

### **5.1 Set Down of Dates of Hearing**

Securing dates for Hearing continues to be a challenge even for very simple Motion matters. It is not uncommon for an Application registered in January 2014 to get Set Down for hearing in June 2014.

## 5.2 Delivery of Judgments

- 5.2.1 This problem is refusing to go away. However I have had the pleasure of attending the Judicial Conference that was held towards the end of last year and one of the topics on the agenda was the delivery of Judgments. Judges and Magistrates at the conference were equally worried that whilst the majority of them labour hard to deliver judgments within a reasonable time there are those amongst them who are pulling in the opposite direction by taking an unreasonably long time to deliver judgments. They however proposed ways to address this problem including listing delayed judgments and the names of the judge for all to see, which we highly welcome. We are further assured by the CJ that this issue is receiving urgent attention.
- 5.2.2 In some instances matters that are filed on Urgency are heard some days later and when Judgement is ultimately delivered a further few days or sometimes weeks later, the pronouncement can be that there is no urgency. In our respectful view, a determination on the Urgency ought to be delivered immediately to allow parties to explore any other option available to remedy what they deem urgent?
- 5.2.3 The Courts need to be encouraged to use more immediate approaches such as granting of Orders with reasons to follow, of course within a stipulated time. The Court of Appeal has for instance provided in its Rules that Judgements would, all things being equal, be delivered by the next session. The High Court and Magistrate Courts could do the same.
- 5.2.4 It would also help the situation if Judges who have a very high number (a number can be agreed) of Judgements outstanding are not allocated any more matters until the number is brought down to an agreed level.
- 5.2.5 There is also another view which says that the Judges are overwhelmed by the cases before them. If that is so, the Society proposes that the Judicial Service Commission should make a case for the increase of Judges. In

addition Judges could have Attorneys employed for them as “Judges Clerks” or “Research Assistants”.

## **6. Production of Court Records**

6.1 Delay in production of record of proceedings for purposes of appeal also continues to be an issue that requires attention. In this regard Government is again urged to increase administrative capacity at the courts to ensure such production. The Magistrates Courts are worse off in that they do not have stenographers, it would help a great deal if you could look into that issue.

## **7. Legal Aid**

7.1 The Pilot Project for Legal Aid Botswana is now in its third year. The Society wishes to share some thoughts on matters that need to be attended to or avoided early if the project is to succeed and be sustainable:

7.1.1 The Project is intended to enhance access to justice for those who are indigent. Care needs to be taken that the Means Test applied is applied consistently and no one with means benefits as it seems to be the case.

7.1.2 The intention is to provide quality legal service to the beneficiaries. Care should also be taken to ensure that only qualified legal practitioners entitled to practice in the Courts of the land are entrusted with legal aid matters. By appointing unqualified persons or paralegals the Government would simply be short-changing the beneficiaries by giving them below par service. It is also an offence to practice law without the requisite admission to do so.

7.1.3 There should also be consistency of treatment of legal practitioners in terms of application of the Fee Structure as per Legal Aid Botswana Guidelines such that all practitioners benefit from Judicare only after serving their pro bono hours.

8. **Amendment of the Legal Practitioners Act**

- 8.1 Discussions with the Ministry of Justice Defence and Security have proceeded very smoothly during the last year. The Society has the commitment of the Minister that the principles agreed in the Layman's Draft Bill, with a few corrections still being discussed, will be placed before the Executive soon. All things being equal the amendments would finally be placed before Parliament this year.

9. **The Rule of Law**

- 9.1 In my address at the 2013 legal opening ceremony, I spoke on the undesirability of self-help and the fact that it compromises the Rule of Law. We again restate this position and condemn any functionary of State, including the municipalities who continue to circumvent the Courts and take the law into their hands. As we profess to all and sundry that as a country we believe in the Rule of Law let us do as we preach.

Ladies and Gentlemen it is now my pleasure to second the motion of the Honourable Attorney General that the Legal Year for 2014 be declared open.

I thank you.