

TRIBUTE TO FORMER CHIEF JUSTICE J. M. NGANUNU
BY DR ATHALIAH MOLOKOMME, ATTORNEY GENERAL
AT THE MEMORIAL SERVICE TO BE HELD AT THE HIGH COURT,
GABORONE, 7 AUGUST 2014

Honourable Chief Justice
Honourable Judge President of the Court of Appeal
Honourable Judges here present
Chairperson of the Law Society
Your Worships the Magistrates
Registrar of the High Court
Members of the Bar
Ladies and Gentlemen,
Most importantly, The Nganunu Family

- 1 The last time the judiciary and the legal profession met as a family in these august judicial surroundings was on 4th February 2014, to mark the annual ceremonial opening of the legal year.
- 2 That occasion is always marked by much pomp and ceremony, and that to me will be the enduring memory of the man we are gathered here to honour and remember, Mr Justice Julian Mukwesu Nganunu, Botswana's immediate former Chief Justice.
- 3 This is beautifully reflected in colour in today's printed programme, as well as in previous programmes marking the ceremonial opening of the legal year from July 1997 to 1st February 2010.
- 4 In addition to the colourful brochures and ceremonies, what will surely be Justice Nganunu's legacy to the judiciary and the legal profession is his thirteen years as Chief Justice of Botswana, after five years as a Judge of the High Court – not to mention many years as a public servant, private practitioner and business man.

- 5 These are indeed remarkable achievements, which demonstrate beyond any doubt that Justice Nganunu was a man of substance, and one who used his time in this world in a productive and meaningful way.
- 6 This is why although I am deeply saddened by the passing of the former Chief Justice Julian Mukwesu Nganunu, I am humbled and honoured to be amongst those who were invited to be here and pay tribute to him.
- 7 I speak here both as an officer of this court and as the representative of the Government of Botswana. The Honourable Minister of Defence Justice and Security, Mr D.N.Seretse is regrettably unable to be with us as he is out of the country on official duties. He has requested me to convey his heartfelt condolences to the judiciary, the legal profession and the Nganunu family.
- 8 The late former Chief Justice distinguished himself early on as one of this country's great legal minds and visionary leader. He belonged to that team who faced the strong headwinds of our crucial moments of institution-building after independence.
- 9 He served selflessly, with integrity and discipline primarily in the public service of this country, which is recognized as one of the best - not just in Africa but also elsewhere in comparative jurisdictions.
- 10 I believe that I would not be speaking for myself and my generation alone but also for the late Chief Justice's contemporaries, when I submit that the value of imitating his example is worth recognizing.

- 11 It appears fashionable in the times we live in to think that leaders are found only in the business or political arenas. That would be an error, for not all leaders are politicians nor are all leaders CEOs of business or bodies corporate.
- 12 Distinguishing public sector leaders or leadership from other forms of leadership is not meant as a criticism, but meant to underline the important public role that the former play. Especially in the legal profession, we need to remember that law is essentially a public profession, that all lawyers serve the public in one way or another. But it is not all lawyers who will emerge as leaders, there are always those who stand out, and the late Mr Justice Nganunu was definitely one of those.
- 13 In this regard the following passage from his address as Chief Justice to the opening of the legal year in 2009:

'I want the people of Botswana to know that our courts are open democratic institutions constituted to uphold the law of the land and to serve the public. They are therefore your institutions which you must use. The judiciary understands that this is a developing country with huge ambitions for prosperity of its citizens. They appreciate that the government of the day must set out the development agenda, just as Parliament will discuss and pass laws that govern all of us.'

*The courts take great interest in studying where they should lodge themselves within such developmental programmes so that they give the necessary services within the development agenda. We assure the other organs of state and the nation at large that we shall play our proper role in nation building and shall not be found wanting. Courts are as accountable, though in a different way, as any other organ or authority created by the Constitution for the due exercise of the functions bestowed on them. Accordingly we accept genuine criticism designed to improve our services or morality; as the business of affording **Justice To All** is a process that affects the public and therefore the public should*

have a say in the services that the courts and their officers deliver and their capacity to do so'.

HON CJ, LADIES AND GENTLEMEN

- 14 In reflecting upon the life and achievements of the late former Chief Justice, I wish to avoid portraying him as a man who achieved it all on his own, some kind of lone trail-blazer. Certainly his family and friends supported him at the social level, but he also worked with his contemporaries in teams that shared a common vision, at the professional level.
- 15 Although not his contemporary as such, I did work closely with Mr Justice Nganunu during his tenure as Chief Justice after I was appointed Attorney General in 2005 until he retired as Chief Justice in 2010. As we are all aware, the offices of Chief Justice and Attorney General are constitutional offices which, though separate and independent, must necessarily work together to ensure the effective and efficient operation of the legal and judicial system.
- 16 During these five years, I worked with Justice Nganunu on many issues of an administrative and professional nature, including the annual ceremonial opening of the legal year to which I earlier referred. As many of us will know, on this occasion, the Attorney General is required to deliver a statement responding to the address by the Chief Justice.
- 17 I recall that Mr Justice Nganunu would, without fail, send me a draft of his speech well in advance, to enable me to start drafting my response in good time.

18 He was meticulous to a fault, and always welcomed comments and criticism of his ideas, even from his juniors such as myself. I was also struck by his work ethic, energy and dedication to duty in the work and meetings of the Judicial Service Commission which he so ably chaired, and which I attend as a member. I am sure Mr Justice Nthomiwa can attest to the many times when he had to burn the midnight oil to ensure that the minutes and other documentation for the JSC were accurate, under the watchful eye of the former chief justice.

HON CJ, LADIES AND GENTLEMEN

19 Mr Justice Nganunu was, among other things, at home in the courtroom presiding over complex issues involving his fellow citizens, or addressing distinguished global thinkers and leaders or when passionately pursuing his vocation as a cattle farmer.

20 As recently as May this year, but for his unexpectedly taking ill and being hospitalized, he would have presented a thought-provoking paper at the Meeting of Commonwealth Law Ministers and Attorneys Generals held in Gaborone. The subject of his paper was Judicial Independence and Economic Development in the Commonwealth.

21 The paper was read on his behalf by the Commonwealth Secretariat, and received critical acclaim and approval from members of the 54 member organization represented at that meeting. In that paper he observed, among other things, that:

“Although it is difficult to prove a direct causal effect between the rule of law and economic development, as well as between judicial independence and development, there is clearly a relationship between the two. Whether the existence of independent courts brings about economic development or economic development itself drives the demand for independent courts, an independent judiciary is crucial to maintaining the rule of law and creates an enabling environment for economic development. The rule of law brings about the necessary peace and harmony to enable citizens of a country or region to take up long term developments without fear of loss of their investments”

22 These were fitting and inspiring words of wisdom at a time when the topic of ease of doing business to facilitate meaningful development is at centre-stage of discourse in this country and globally.

These and many other messages Mr Justice Nganunu shared with us during his life and career are what we shall remember and cherish. His legacy will certainly live on in the hallowed chambers of our courts, in his judgments, in us, the judges and lawyers he has mentored, and most importantly, in our hearts and thoughts.

May his soul find eternal rest.

