

**TRIBUTE GIVEN AT THE MEMORIAL SERVICE OF THE LATE
CHIEF JUSTICE-JULIAN MUKWESU NGANUNU 1941-2014
HELD AT THE HIGH COURT BUILDINGS IN GABORONE ON
THURSDAY THE 7TH AUGUST 2014 AT 2.00 PM BY HON.
G.N.NTHOMIWA.**

SALUTATIONS

My Lord the Chief Justice, Hon. Maruping Dibotelo

**Judge President of the Court of Appeal, Hon. Ian. S.
Kirby**

Justices of the Court of Appeal

Judge President of the Industrial Court Hon. T.Maruping

Judges of the High Court

Attorney General Dr. Attalliah Molokomme

PS MDJS Mrs Segakweng Tsiane

Ombudsman Mrs F. Bakwena

All PS's here present

The Nganunu family

Your Worships of the Magisterial bench

All mourners here present

Ladies and Gentlemen

1. We are gathered here to remember and celebrate the life of a great man and indeed a legal luminary. A man whose contribution to the development of this Country and the Judiciary is open for everyone to see. The Judiciary of Botswana small as it is, is counted amongst the best in the

World and this can be attributed to the stewardship of the late Chief Justice Mr Julian Mukwesu Nganunu.

2. I wish to speak about the late Chief Justice Nganunu as the Chief Programme Officer of the Judicature of the Republic of Botswana. I will in most cases allow him to speak to you as I will quote him extensively. Given his vast experience acquired over many years at the Attorney Generals Chambers as Deputy Attorney General, Acting Attorney General and Permanent Secretary in the Ministry of Mineral and Water Resources and in Private Practice it is fitting that he could be referred to as Chief Programme Officer of the Judicature. I wouldn't want to say much about him as a Judicial Officer as I feel that there are people here better placed to do that.
3. The appointment of Former Chief Justices Moleleki Mokama and Julian Nganunu in 1992 and 1998 respectively marked a shift in thinking in this country and staffing of the judicial arm of Government. From time immemorial the Judiciary had been in the hands of expatriates who no doubt played their roles for the betterment of this country. The coming in of the two Chief Justices in succession marked a new historical era which no doubt changed the outlook of this Judiciary and put into motion events which would eventually result in the kind of Judiciary that Botswana has today.

4. When the baton of Chief Justice was handed to Nganunu he spared no time in announcing the kind of Judiciary he wanted to develop. In his first interview with the Mid-Week Sun (July 30 1997) he articulated his vision on the Judiciary. He said ‘the courts must be manned by men and women of integrity and legal knowledge that will instil public confidence in the Judiciary.’ He undertook to increase the ceiling of judges, improve court infrastructure and conditions of service of Magistrates, and improve the security of judicial officers, to give capacity building to the office of the Registrar, improve communication in the Judiciary and between the bar and the judiciary and finally improve accessibility to justice. Under him the Judiciary expanded both in terms of physical infrastructure and resources.
5. Prior to 1998 when I was appointed Registrar and Master of the High Court I had not worked with Chief Justice Nganunu before and obviously I did not know much about him beyond the fact that he was Chief Justice of the Republic of Botswana. At the time he took over the reigns of power in the Judiciary after the death of Mokama CJ the late Justice Wallace Godfrey Grante was the Registrar and I was his deputy, somewhere in the periphery. I then came to know him better when I was appointed his Chief Executive Officer where I worked directly under him and we interacted on daily basis.

6. I must confess that at the beginning I found him a very difficult boss to work with and I started wondering whether I would last in that office. Every day he came into the office in a different mood and it appeared I could never do anything right in that office. I embarked on studying him; his character, needs and to try and understand the direction he wanted to take the organization. I quickly learnt that the Chief Justice wanted work done and achieved according to his roadmap. He wanted his style of doing things to show in everything including his style of writing. You needed to know him and understand him. I later learnt that when he quarrelled with you he did not mean you were worthless; he meant do it the right way. We became close and every time he called me by my first name I knew he was in a good mood but when he called me by my second name I knew things were not right and I adjusted accordingly.
7. One sure thing was that even in the midst of all those criticisms he would not throw you to the wolves but would help you work out the problem. With time we developed a common vision and mission and we were able to work together for 13 years. These became the most eventful years in our working relationship. Chief Justice Nganunu was parental and a teacher.
8. As a human being he had his short comings, the most outstanding one was time keeping but not in court where I am informed he was punctual. When I started working with

him I thought he was not time conscious. But I later discovered that because he was a perfectionist and meticulous he ended up spending a lot of time perfecting what he was doing at the expense of the set timeframes.

9. Chief Justice Nganunu wrote his own speeches because he wanted them in his own style and language. He would spend hours and even days on them and ensured that all the "t's" were crossed and "I's" were dotted. What he read was a product of long arduous hours of work. He was thorough, patient and given to details. I admired his patience although it haemorrhaged our energy because once on his speech we put aside everything else and focused on it. I learnt never to hurry over something but to carefully work on it until it completely captured your ideas. 'You have only that one chance to say what you think about a subject and convince those listening to you that your view is correct,' he would say.
10. One quality he had was the ability to speak about any subject as if he was an expert in it. He had the right language for all seasons and those occasions. He would spend hours researching on the subject to make sure that what he wrote conveyed what was correct in simple English. He always advised me to "always write short sentences in simple English that conveyed what you wanted to communicate."

Visionary and transformational Leader

11. Nganunu had very wide management experience accumulated over many years of working in the public service and in the private practice. Armed with that experience he was clear on the type of judiciary he wanted to develop and that the country needed. He was determined to develop a judiciary that could serve the Country in the 21st century; a modern judiciary that will cope with the challenges of the millennium; the type of judiciary that will cope with the challenges of globalization, harness technology to its advantage and a workforce that is the best in the market. Several initiatives were tried to deal with the chronic problems of backlog of cases and slow service delivery. Amongst others were engagement of temporary judges, circuit courts and others. All these efforts made minimal impact and the problems continued. He was the right man for a young Judiciary struggling to raise its head above the ground in the midst of never ending criticisms of inefficiency and the mounting backlog of cases.
12. As a visionary leader he steered the Judiciary (1999) towards developing a vision that still remains relevant as “*Justice for All.*” This compelling vision for the Judiciary appealed to both the minds and hearts of all employees of

the organisation hence the overwhelming support to the reforms he initiated. He challenged his staff to look at the functions of the Judiciary and be satisfied that it was up to scratch. He realized the urgent need for change and that the judiciary needed transformation which included overhauling some of its procedures and structures. The Judiciary therefore embarked on the difficult road of transformation in 2000.

Speaking about reforms he said:

‘ As is undesirable, reforms in the Botswana judiciary started a long time ago, generally in response to complaints, and were largely piecemeal, and thus unable, in my view, and in hindsight, to have the impact that they should have had if they were part of a package. The impetus for these reforms though has always been the deep belief in Botswana, which the judiciary shares, that for the general public and the common person, their dividend must be in the form of enhanced service delivery, whether in terms of basic infrastructural services like health clinics, good roads and communication, water and electricity; and from the judiciary, the availability of prompt court services so that the litigant can vindicate his right, say in respect of land allocation of his livestock, etc.”

13. Chief Justice Nganunu was determined to develop a judiciary that would serve the interests of this Country and ensure that disputes were settled on time. He wanted a judiciary that supported the national vision and also worked harmoniously with the other arms of Government and

stakeholders. His vision was of a judiciary that was unsurpassed. He said about this:

“I suggest that at this stage of our development we resolve as a group and that from henceforth individually, we shall provide to our people in our courts judicial service unsurpassed by any one. The provision of such quality judicial service is a prerequisite for tranquility in the nation and the reigning of the rule law. We as judicial officers and our supporting services should be satisfied and highly motivated in our knowledge that our service to our country is part of a fundamental requirement for national development. We should be proud that we play a role in our society that can make a difference and we should take delight in delivering an enviable service.”¹

Such a judiciary must measure up to the world class. He noted;

We are constantly renewing ourselves so that in the long run our judicial system and its judicial officers, together with all support staff, will be the envy of the people of Botswana. When looking at the services we should be providing to the people of Botswana we also take cognizance of the fact that we now live in a global village where our work and efforts should not only satisfy the people of Botswana but should measure up to international standards. Hopefully such standards are not just set by one country or a small group.²

14. The backlog of cases worried him and he embarked on searching for alternative ways for disposing cases. Circuit courts had not achieved that objective and the judiciary had

¹*Taken from a speech at the Judicial Conference on the 27th July 2000*

²*From a speech given at the opening of the Legal Year on the 1st March 2005*

to search for other methods of improving its delivery. It had to look beyond its shores to see how others faced with the same challenges had approached them. He noted:

I think that we must energetically investigate other avenues of dispute resolution, as other countries before us have done, in order to contain the heavy inflow of cases to the courts.³

15. Judicial Case Management became one of the methods that he developed interest in and explored further. The Courts of America had been using the system for many years and they reported very positive results in relation to case backlog reduction. Some African Countries had tried it and succeeded but others failed. He was sold to it and determined that it should succeed in Botswana. As part of his preparatory efforts to launch a successful system he invited American Judges to investigate our system and suggest best ways of installing JCM in the likes of Judge Campbell and Wallace (2006). He had to ensure that JCM was understood by everybody and embraced as a progressive system that would bring about improvements in the judiciary. He started by selling judicial case management to the Judges and then Registrars and filtered it to the lower cadres, the attorneys in Government and in the private practice. Lastly he legalized (2008) it through the amendment of the Rules of Courts. He observed when initiating the amendment of the Rules:

³Legal Year 2005

Rules of court are being changed with a view to reducing prolix and unnecessary pleadings so as to save trial time. One of the proposals, for example, will be to put judges in charge of cases soon after their registration to eliminate any delay induced by attorneys in their pleadings and readying them for trial. It is the judges' resolution to expedite judgments by delivering them within 3 weeks of the conclusion of trials. It is my intention to amend the rules as soon as possible to make the holding of pretrial conferences meaningful by identifying real issues for trial and eliminating matter that is not essential; as well as using "admissions" more effectively. This will save valuable court time. Some complicated and long judgments cannot be delivered within that time frame but those are few and with respect to them the judge normally gives a time for delivery of judgment.⁴

Judicial independence

16. Chief Justice Nganunu was an ardent believer in a democratic and constitutional set up where the three arms of Government functions as per the provisions of the Constitution that set them up. He believed that for a democracy to flourish an independent Judiciary was an indispensable prerequisite. He was therefore a passionate and tireless advocate for judicial independence and the topic was always top most in the numerous speeches that he gave at various fora. An independent Judiciary is a guarantor of democracy he said. Separation of powers he stated must be real and must be seen to be so. It must not only exist on

⁴From a speech given at the opening of the Legal year at Lobatse on the 7th February 2006

paper but must be practised by all Government institutions. Each institution in a democratic State must respect the role of the other. To that end therefore, when each Organ of the State carries out its duties and powers as given by the Constitution and explained in other laws properly and in good faith, this will result in a harmonious and orderly system of government resulting in social and political stability in the country. He pointed out that:

“This independence is not granted to the Judiciary for its own sake or that of the judges. Judicial independence is part of the constitutional plan to ensure that cases brought to court are decided independently of any authority or power outside the court room; and that every one, whether rich or poor, servant or master, State or citizen, will have his case decided only on its own merit⁵.

17. He pronounced that the independence of the judiciary was not an esoteric pronouncement for the conform of judges. It is a practical measure designed to ensure, in the interest of the litigants, and the public interest that the courts are true and genuine arbiters of cases brought before them.

Separation of powers

18. Further talking about the separation of powers he said:

“The secret to this smooth operation is the realization and I would think the desire by each of the organs to have the other two organs operate in

⁵ Montesquieu – if there be an independent judiciary.

their sphere smoothly.....What is important above all is that each organ should not be prevented or be unduly circumscribed in carrying out its duties. Each institution must be given space within which to work; especially in the areas where they must act as a check and balance of the powers of others.”

19. The late Chief Justice wanted a Judiciary that was efficient in the manner of operation. He desired a judiciary that delivered well researched judgments that would bring to finality the matters brought before the courts. He declared that rendering justice to those who engage the courts within a reasonable time was at the centre of the Organisations mission. As the highest court in the land it had to have all the literature at its disposal to come up with judgments that represent the current trends in the law and put finality to any problem brought before it. The courts as interpreters of the law should have all the necessary tools needed to craft that law, i.e. law books. In an endeavour to find those resources the former Judge President Tebbutt obtained a donation of P100, 000.00 from Debswana and what followed is common knowledge as the press came hard on the late Chief Justice accusing him of compromising the independence of the Judiciary. That was not the intention anyway as it was done for a good course, to improve the quality of justice in our courts.

Contribution of the courts to the promotion of democracy.

20. On the contribution of the Courts to the promotion of democracy he asked,

“What then is the contribution of the courts in the promotion of democracy in Botswana? First it has to be stated, as the title of the subject has highlighted, that only an independent and unbiased judiciary – and may I also add – an educated and professional one – can truly hope to have the chance to give correct answers in and judge fairly in these controversial areas. Issues concerning the exercise of state power which adversely affects the rights of individuals and groups are sometimes very difficult to judge because there may be legitimate considerations on both sides; or even issues of human suffering on the one hand and considerations on the part of the person exercising power of the general interest of the community or the government and or the state. Each party may believe itself as the righteous one and there may be emotion associated with the case; and a fear of loss of face. Freedom from fear and unwarranted pressure is the first requirement of the judges that handle such cases.”

21. One significant reform by the JSC under his chairmanship that deserves mention which came soon after the composition of the Judicial Service Commission changed following the amendment of the Constitution was the introduction of interviews for Judges which was not done prior to that. He thought it transparent if the positions of judges were competed for by suitable and competent lawyers who qualified for consideration for appointment in terms of the Constitution. Although there is a feeling in

some quarters that that reform did not go far enough, it none the less changed the operations of the JSC as far as appointments of Judicial Officers in the higher bench went.

22. Mention should also be made of the historical bible that he introduced for Presidential Oaths in **2006** during the swearing in of the former President Festus G. Mogae. He wanted it introduced to provide information to historians and students of politics on the swearing in of their Presidents and how and when they succeeded each other. To-date it has been used by the immediate former President H.E F.G.Mogae and the current President.

Accessible judiciary

23. Chief Justice Nganunu strongly believed that justice should be accessible all round; accessibility in terms of rules that regulates the cases and in terms of location of court infrastructures. At the end of it all Batswana should be able to understand their courts and use them. The courts had therefore to be near to be reached by every Motswana on foot, horseback, motor vehicle, donkey cart or through any mode of travel available to him. The Rules of courts too had to be user-friendly enough to enable every Motswana to bring their cases to courts. Such Rules of Court should support justice which is the ultimate goal of every litigation. To further enhance accessibility of the Courts and to reach out to the disadvantaged groups, he initiated the

establishment of the Small Claims Courts to deal with small claims without the necessity of prolix rules of Courts.

Wild life and minerals

24. One area that was at the bosom of his heart which he talked about over and over again was the mineral industry and wild life. He still had a strong admiration for the Ministry of Mineral Resources and Water Affairs. He closely followed developments in that Ministry and he would tell you authoritatively about prospecting of minerals, new hopefuls and mines that were about to be opened. What he wished most could be discovered in this country was uranium. Once he started talking about that mineral he would go to the map of Botswana which hang in his office show you where the uranium belt in South Africa ran and our prospects at discovering it. He wished something new could be found to divert attention from diamonds which were facing threat from Survival International and synthetic diamonds.
25. He honestly had his love for flora and fauna. Besides that I do not see what else he loved most apart from his family. Almost all the holidays he would go to the Chobe to refresh and replenish his love for nature. The first thing he would say to you upon his return is how he enjoyed himself in the swamps, the new wildlife he kept on discovering and how refreshing that was. He would describe in detail his

excursion into the wild to the extent that you also felt like you were part of it. You would emerge from his office satisfied that the man indeed had a good time in the wild.

26. Chief Justice Nganunu would not begrudge his officers or make permanent records for them by writing them letters whenever they performed below par. He exercised great patience in dealing with his human resources which he believed needed continuous training.
27. His approach to officers whose performance was low was that they should be given a chance, monitored and assisted to improve. He would show you your mistakes and explain why he thought you were wrong. If you ignored his advise he would not spare you the tongue lashing. Once he has given you a good one it ended there and he knew you will never repeat it. Repeating the same mistake was unthinkable. You will immediately think of the acidic criticism you received the previous day or whenever.

His working habits

28. Chief Justice Nganunu worked until very late every day and expected his Registrar and secretary to be around as well. That manner of working was strategic in that it gave him an opportunity to discuss and plan for his organization with his Chief Administrator without the interference of telephones and unannounced visitors.

29. One thing that stood out about him was his passion for results. Execution of every assignment must be immediate and produce results that can be demonstrated for all to see. Government he always said would support efforts that show results and he made sure we achieved some demonstrable results.

Challenges

30. Developing an institution of importance and with far reaching powers like the Judiciary is never an easy task. There are challenges you face some of which make you doubt if you would overcome them. Such was the case in his endeavour to develop the Judiciary. The Judiciary he inherited was far from a refined institution if ever there is such an institution. It was the least developed of all the Government institutions with a very small budget. He came in at the time localisation was at its peak and locals were taking their rightful places in the various posts in the bench, Judges in the High Court, Magistrates in the Lower Bench and Registrars in the Courts Administration. All these cadres urgently competed for his attention to deal with their problems as they emerged. First in the localisation process was the Magistracy and then the higher bench. In 1999 Magistrates threatened an industrial strike complaining about their conditions of service. A solution was quickly found although he felt strongly betrayed by representatives of magistrates he worked with in this matter

and the newspaper leakages of the efforts made to resolve these problems. 2009 witnessed the worst conflict with the magistracy which tested management mettle when magistrates presented a petition with a list of demands some of which were impossible to meet as they hinged on tampering with constitutional prescriptions. This was later followed by Judges Complaints on discriminatory conditions of service, and litigation that followed.

31. When all these problems arose I discovered a strong leader in him who stood against the most vicious tides of criticism and emerged through the most difficult situations with long-term solutions to those problems which eventually brought peace to this organisation. The more problems beleaguered his organisation the more his resolve to find quick and amicable solutions to them.
32. There is no doubt that he took all these grievances very seriously and was eager to resolve them expeditiously. He also valued the contribution of his team in the resolution of these intractable challenges and he would engage me for hours as his Chief Administrator exploring all angles for the just and amicable resolution of the problems. Following all these challenges the Judges Pensions Act that separated the Judges Pensions from the Pensions of the Public Service was promulgated; Section 3 of the High Court Act was amended to bring certainty to the number of judges that could be appointed to the bench; the Small Claims Courts

Act establishing Small Claims Courts was also promulgated; judge's security was enhanced; more resources were voted for the Judiciary and more Courts and houses for Magistrates were constructed. Also new programmes to improve delivery of the courts were introduced. Etc. All these developments were a testimony of a leader who listened and was passionate about his organisation and to improve its human resources to a level at par with the best in the Commonwealth and in the world.

33. Chief Justice Nganunu loved his home village of Mapoka and he also enjoyed talking to pupils in schools to encourage them on their education. He collected contributions from individuals and companies for various causes in his home village and for purchasing equipment for schools such as computers and others. It is impossible to enumerate the many acts of kindness and benefaction, whatever the size, done almost daily and as part of his ordinary life which this man performed. The communities far beyond his home village and Gaborone where he resided have reason to remember him with gratitude for his acts of benevolence.
34. He indeed had the quality in his public life and in his daily life of inspiring confidence in those with whom he worked and whose affairs he handled, as a personal friend or advisor or as a judge in their cause in court. Litigants and accused persons were always assured of receiving a

conscientious and meticulous consideration. He always sought to uphold the highest judicial standards and his hard work was ever a source of inspiration to his colleagues. As Chief Justice he guided the affairs and the destiny of the Judiciary of the Republic of Botswana with a firm but sure hand to where it was when he left it (2010).

35. Chief Justice Nganunu advocated for a harmonious working relationship between all the key players in justice which he described as the 'five sides of the pentagon.' These were the Courts, the Attorney General, Police, witnesses and the Private Practitioners. He said about them:

"I entertain no doubt that you share my dream that if the five sides of the pentagon continue to move in tandem one with the other the nation of Botswana will have a judiciary that is capable of delivering justice to all its people in a competent, speedy and efficient manner. "

36. Lastly Justice Nganunu relished clear communication and transparency. He realised that poor communication resulted in rumours and gossips. He therefore discouraged gossip and rumour mongering in this manner:

"We ought to design our work programmes so that we produce for ourselves a good and pleasant working environment. We must learn to communicate with each other in a friendly, meaningful and polite manner. We must trust each other and desist from gossips and rumours. As lawyers we ought to know the value of working from facts and not rumours. Gossip and rumour mongering is anti social and causes much harm to our relationships. We must realise that the responsibility for creating a good working environment depends on

each of us – starting with the Chief Justice, the judges, the Registrars, the magistrates to the newest employed clerk. As far as communication is concerned, the Registrar's office ought to create a meaningful two way communication system to link the magistracy, in particular, with the central administration and the High Court.

37. He was concerned with the security of judicial officers and urged Government to improve it to prevent risks that they may be exposed to. He stated:

“In order that judges should exercise their functions independently, competently and impartially, it is also necessary that judges feel safe. They must, as far as possible, be free from the prejudices of society, although they must not remain aloof from society and live in ivory towers. In my view, if a judge has been burgled the night before he considers sentence on a burglar, it is very likely that his previous night's experience may be brought to bear on the unfortunate accused. I feel therefore that the State ought to provide the best security possible for all judges at all times. In this respect I am personally most grateful that the government has agreed to give some modest security to the magistrates both at their offices and at their residences. We shall now need to examine more carefully the additional requirements for security and hopefully our request for funding in that respect will be sympathetically considered.

38. Of the lawyers he was of the view that they were leaders in society and he urged them to be exemplary in their day to day business and social life. They should provide leadership in the presentation of issues of justice and human rights and give the lead in ethics and morality.

39. Speaking at the Law Society Dinner on the 27th November 2007 he said this about the quality of a Botswana Lawyers;

‘My advice to you Ladies and Gentlemen is that the Global World, the Botswana vision and the spirit of the legal world requires that a Botswana Lawyer be smart of brain and clothes, be ethical, be thoroughly professional and trustworthy.’

40. Ladies and gentlemen there is a lot that could be said about this giant we are gathered here for that can fill library shelves but on account of time I will not keep you much longer. Botswana has lost one of its illustrious sons, a doyen in the law no doubt, a man who still had the energy to do more for his country.

41. When he closed his chapter on his active working life in the public service, like God during creation when he looked back to what he had created and said ‘it is good’, he too looked back and declared at the Phakalane Golf Course on the 25th June 2010;

‘I feel good about those years....because it was service that ended up directly benefiting the people of Botswana. It is work that contributed, in no small measure, to the growth and present prosperity of this country; thus giving us..the older generation-a national patrimony that we can bequeath to our successors.”

42. You have indeed run a good race and won the crown of glory.

MAY YOUR SOUL REST IN PEACE MDAMBELI.

EZELANI NGE DOTHODZO MDAMBELI.