

Budget Vote Speech by Michael Masutha, MP (Adv)

Minister of Justice and Correctional Services

Tuesday, 19 May 2015

National Assembly

Honourable Speaker of the National Assembly;

Ministers and Deputy Ministers

Honourable Members

Heads of Court

Members of the Judiciary present

Heads of Professional Law bodies;

Distinguished Guests;

Ladies and Gentlemen

Today's maiden budget vote debate of the Office of the Chief Justice marks an important turning point in the 21 years of our democracy.

Let me thank this Honourable House for the separate budget allocation for the Office of the Chief Justice. It heralds a new beginning that will facilitate the determination of a proper budget for the courts and the independent Judiciary. This affirms the ANC Government's commitment to the independence of the Judiciary.

The separate budget allocation of the Office of the Chief Justice is the culmination of protracted institutional reforms that underpin the Constitution Seventeenth Amendment and the Superior Courts Act. The Constitution Seventeenth Amendment affirms the Chief Justice as the head of the judiciary and assigns on him or her the responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial

functions of all courts. On the other hand the Superior Courts Act establishes a judicial governance framework through which the Chief Justice and Heads of Courts oversee the management of judicial functions as listed in section 8 of the Act.

The Office of the Chief Justice is a mechanism for providing an administrative support functions to the Chief Justice, other Heads of Courts and the Judiciary in performing their judicial functions.

We have transferred the administrative functions and staff of the Superior Courts to the Office of the Chief Justice with effect from 1 October 2014. In total, 1486 staff members who perform functions directly connected to the Superior Courts were transferred from the Department of Justice and Constitutional Development to the Office of the Chief Justice. Similarly, a budget to the tune of R1, 5 billion has been transferred from the Department's budget to constitute part of the budget of the Office of the Chief Justice which from 1 April 2015, received its own separate vote allocation.

We have taken note of the anxiety, in particular amongst the Magistracy to have the administration pertaining to Magistrates' Courts transferred to the Office of the Chief Justice, even prior to the enactment of a proper legislation that will facilitate such an arrangement. I need to remind all that the transfer of the administrative functions relating to the Superior Courts was facilitated through the Superior Courts Act which we are aware has taken a long time in the making. Similarly, legislative reforms are necessary to achieve the same purpose in respect of the administration relating to the Magistrates' Courts. It is in this context that we have embarked on a process to develop a concept framework that will culminate in the enactment of an appropriate legislation to replace the out dated Magistrates Court Act of 1944. We are confident that the contemplated Lower Courts Act would take a much shorter time to complete as it will assume the broad framework adopted in the Superior Courts Act.

Madam Speaker,

It is important to note that the Office of the Chief Justice is an interim phase pending the design of an end-state that will usher in a Judicial Administration model suited to our constitutional democracy. The Judiciary has expressed its view on this topic through the Chief Justice. We will soon commence with the drafting of a concept paper that articulates best practices extrapolated from models adopted in other jurisdictions and

home-grown precedents. A discussion of the concept framework which will culminate into a draft Bill on the preferred model will form part of the themes that will be discussed at the colloquium that we are planning towards the end of this year. Further announcement regarding the envisaged colloquium will be made after I have canvassed this matter with Cabinet.

The independence of the judiciary is crucial in view of the role it plays in a constitutional democracy within the context of separation of powers. Former Chief Justice Ngcobo alluded to this point when he remarked:

“The role of the judiciary in a constitutional democracy is an expansive one. Decisions of judges affect many people. Courts have the power to overrule even the most popular decisions of the other arms of the state if they believe they are contrary to the Constitution. The acceptance and support of these and all court decisions by society depends upon public confidence in the integrity and independence of the judiciary”.

Associated with judicial independence is judicial accountability which is essential in ensuring that courts perform optimally. The legislative framework that provides for a mechanism for handling complaints against judges and a dispensation for financial disclosure are important measures that seek to safeguard judicial independence and accountability. During the 2014/15 financial year, 69 complaints were lodged against Judges of which 57 were finalised and 12 are pending. The majority of these complaints were dismissed as they related to dissatisfaction with court judgments. Some of these complaints are in relation to judgments that have been reserved for long periods and thus depriving litigants of access to justice.

With regard to financial disclosure by judges, our honourable President, through a Proclamation published in the Government Gazette fixed the 29<sup>th</sup> of January 2014 as the date from which the 60 days by which judges must make disclosure of their financial interests took effect. It is encouraging that of the 240 judges in active service 238 have disclosed their registrable interests. I am confident that the Chief Justice and the Judicial Service Commission will follow-up on the two that have not done so. In respect of

judges discharged from active service we are in the process of revising the Regulations in light of the recent judgment regarding the matter.

Honourable Members

We have made significant strides in relation to the transformation of the Judiciary as we seek to ensure that the lofty ideals outlined in the Constitution, of establishing a judiciary that reflects the gender and racial demographics of the South African society. Although we have made significant progress in relation to racial transformation, the representation of women on the bench remains a concern. Only 61 out of 240 judges are women. The Judicial Service Commission continues to grapple with this issue. The two vacancies in the Supreme Court of Appeal and the Constitutional Courts respectively provide an opportunity to improve the gender composition in the highest courts in the land.

I also wish to share with this House some of my observations during the recent visits I made to the Superior Courts. Visits to the constitutional Court, Competition Appeal Court and Land Claims Court are still to take place. The purpose was to meet with Judges Presidents and judges of all courts and apprise myself of the conditions under which they work. During the visits at which I was accompanied by senior officials of the Department and the Office of the Chief Justice, we were able to make interventions on the spot, while some were medium to long term, in particular with regard to the unsatisfactory state of our physical infrastructure at some of the courts. On matters of substance the practice of 'forum shopping' which appears to be the trend in certain High Courts also emerged. I am pleased that the leadership in the judiciary has undertaken to manage this issue which has the potential of undermining the credibility of our courts.

Madam Speaker,

Of the R1, 616 billion allocated for 2015/16 financial year, R873, 7 million is for Judges' remuneration and benefits and R742, 4 is for administrative support functions. Of the latter amount, R640, 4 million is allocated to Judicial Support and Court Administration.

These funds will be utilized to improve the court system through an effective and efficient case flow management system and the establishment of the Office of the Chief Justice Provincial Centers which will provide administrative support to the Superior Courts. The funds allocated for Judicial training of judicial officials has increased from R25, 3 million

to R28, 6 million in 2015/16. A total amount of R90, 7 million has been allocated to conduct about 75 judicial education courses over the Medium Term Expenditure Framework period.

In conclusion, let me convey our profound gratitude to the Chairperson of the Portfolio Committee and his entire Committee for their continued support and guidance. A special word of thanks also goes to the Chief Justice for his astute leadership of the Judiciary, the Heads of Court and all members of our Judiciary.

Please allow me to thank my two Deputy Ministers, the Honourable John Jeffrey and the Honourable Thabang Makwetla, for their support and my colleagues in the JCPS Cluster.

Lastly I would like to thank the Secretary General for the Office of the Chief Justice, Ms Memme Sejosengwe, the Director-General of the Department of Justice and Constitutional Development, their respective managements and the entire staff in the Justice family for their tireless efforts.

I thank you.