



## **"Strengthening Access To Justice For All: Creating a lasting legacy for the people of South Africa ", Address at the AGM of the Black Lawyers Association**

**Mogoeng Mogoeng, Chief Justice of the Republic of South Africa 19 October 2012**

President of the Black Lawyers Association, Mr Busani Mabunda Deputy President of the Black Lawyers of Association, Mrs Kathleen Matolo-Dlepu Honourable Justice Lebotsang Bosielo, of the Supreme Court of Appeal, Honourable Themba Sangoni Judge President of the Eastern Cape, Honourable Lusindiso Pakade Acting Deputy Judge President of the Eastern Cape, Honourable Mr Justice Duncan Dukada of the Eastern Cape Division, Colleagues in the Legal Profession Distinguished Guests Ladies and Gentlemen, Good Evening.

Let me begin by expressing my sincere gratitude to the National Executive Council who saw it fit to invite me to this meeting as the organisation concludes its business for 2012. In line with your theme: "Transformation Debate – What Constitutes a Transformed Judiciary"; I have decided come and inform you of developments in the Judiciary – in a little over the 12 months since I took office as Chief Justice – and to share our vision for the Judiciary with you.

A transformed Judiciary is one that is representative of the demographics of this country both in relation to race and gender without sacrificing the quality of justice that all who live in South Africa deserve.



It is a Judiciary that is alive to the injustices often meted out by courts to Black people during the apartheid era, the inaccessibility of courts and real justice to them; the commitment we have since made as a nation to make a decisive break from that institutionalized evil of yesteryear, our constitutional values and the related imperative to bring into being a justice system that South Africans can relate to and proudly call theirs.

A transformed Judiciary is in place when Judicial Officers enjoy individual and institutional independence; embrace judicial accountability; when courts are accessible, Judicial Officers are civil and genuinely respectful to litigants and all have embraced the spirit of collegiality; where the system does not permit inordinate delays in the finalization of matters and the delivery of reserved judgments.

As we embark upon the process of breathing life into the vision of transforming the profession and the Judiciary; we must always draw inspiration from black pioneers in the practice of the law like Attorneys, Pixley ka Isaka Seme, Godfrey Mokgomane Pitje, Griffiths and Victoria Mxenge and Advocate Duma Nokwe, to mention but a few. For it is in the recognition and acknowledgment of the sacrifices of our legal forebears; that we will truly appreciate how privileged we are, as Black lawyers, to have had these veterans do the foundational work for us.

I think that it is safe to assume that almost all of you present here today are all too familiar with the extremely difficult terrain that these warriors had to traverse, to help the nation and the Black legal practitioners in particular, to get this far. I therefore implore you, never to take lightly the burden of injustice and immense humiliation borne by these stalwarts at



the height of apartheid in this country. Ultimately, their sweat and blood finally paid dividends in 1994, when a new democratic dispensation was ushered in, and we will do well never to forget; even as we forgive in pursuit of the greater and noble course of national unity and reconciliation. You may recall that when I took office just over a year ago I undertook to hit the ground running to ensure that ours was not business as usual. This was inspired by my personal knowledge of the state of the justice system and the myriad complaints that continue to plague our court system about the less than satisfactory delivery of service that our people have had to contend with – especially those in poor, far-flung, rural areas, including most townships.

Against this background and following protracted consultation, the leadership of the Judiciary, at all levels of the court system, met in Limpopo over a period of two weeks in August. For the first time in the history of this country; we mapped out a decisive and clear programme of action, coupled with timelines on how to stem the tide of poor service delivery in all our courts. This was done to give impetus to the resolutions of the July 2011 Access to Justice Conference which underpinned the need to fundamentally turn the status quo on its head – if we are to deliver the quality justice that our people continue to yearn for so desperately.

To this end, and having identified the judicial case management model as a way to enhance court efficiency and effectiveness, and to reduce backlogs; we set up pilot sites for the implementation of Judicial Case Management.

Often I get quizzed about what Judicial Case Management is about and this is how I explain it: When a case has got many litigants, or many accused persons and there are so many charges or claims involved; or if it



is a very complex matter; what happens as a matter of course is a resort to judicial case management which means that practitioners would approach the Head of Court and ask that the case be conducted in accordance with the judicial case management system.

So, at the earliest possible stage, probably even shortly after filing, the Head of Court appoints a Judicial Officer who would work with practitioners to ensure that cases are trial-ready before a date for hearing is allocated to them.

In that case, the parties would rarely ask for a postponement on the date of trial, documents are exchanged on time, the number of witnesses is markedly reduced and the issues to be traversed similarly defined with greater clarity. They would debate the legal issues which are likely to detain them and find out if there was no easier way of resolving them without spending days on legal technicalities when merits cry out for attention.

We saw this in practice at the North Gauteng High Court earlier this year when about 14 advocates were charged in the Road Accident Fund misconduct matter. The matter moved so fast that in no time, it was disposed of. More importantly (with this model); the pace of litigation is brought back into the hands of Judicial Officers. So, if we do not implement judicial case management, when the public accuses us of failing the nation; we would have no option but to plead guilty as charged. The power that we need to run the system effectively is in our hands and it is judicial case management. I need not remind you that the pace of litigation is presently dictated by litigants. They give one another all sorts of indulgences, which often leave the Judicial Officer with no choice but



to grant the postponement, often occasioned by the failure to prepare properly.

Some important elements of Judicial Case Management have been implemented in the Western Cape, North Gauteng, KwaZulu-Natal and the North West High Courts as well as the Labour Courts. In the next few weeks, I will be visiting some of our pilot sites to see first hand the progress already made there. Our vision as the leadership of the Judiciary is to assess what difference the implementation of Judicial Case Management has already made is introduced in all our courts. Caseflow management structures must be strengthened where they exist and established where they do not.

You will recall that these fora exist at a District Court level, with the Head of Court as the Chairperson. Members are drawn from the NPA, SAPS, Correctional Services, Legal Aid South Africa and the attorneys' profession. They also exist at a sub-cluster and cluster level. An overarching structure also exists at a Provincial level led by either the Judge President or a Judge designated by the Judge President. Additionally, we have the one comprising Judges which I used to chair before I became Chief Justice. It is now chaired by the Deputy President of the Supreme Court of Appeal, the Honourable Justice Mthiyane.

Over and above these fora; we have since identified the need to establish a forum comprising the Chief Justice, the NDPP, Regional Court Presidents and Chief Magistrates; the Directors General of the Departments of Public Works, Health, Social Development, the National Commissioner of SAPS, Correctional Services, as well as the Chairperson



of Legal Aid South Africa to oversee all case-flow challenges in the country and find solutions.

This objective was realized on Saturday 13 October 2012 in Cape Town when the National Efficiency Enhancement Committee was launched. Provincial structures will report to that national structure, which will coordinate and oversee case-flow activities and address performance related challenges that have proved to be too difficult to resolve at provincial levels. All key stakeholders acknowledge that the justice system is underperforming and in this regard, a subcommittee was set up to propose measures to be taken to improve our performance as a matter of urgency.

The need for continued Judicial education cannot be over-emphasised and I am pleased to note that you have a Continued Legal Education Centre which offers a number of courses designed to empower your members through a practical and systemic approach to legal practice.

It gives me great pleasure also to report to you that the South African Judicial Education Institute, which has been set up to provide training for Judicial Officers by Judicial Officers has been up and running since January 2012.

Our programmes, including those for aspirant Judges; are designed to capacitate Judicial Officers to execute their duties efficiently and effectively. It was humbling to learn from those who have been through them, testifying to the positive impact that they have had on their ability to perform well, as they also did about the exceptionally positive fruit born by Judicial case management, where it has already been introduced.

It is important that you help us create a dependable pool of practitioners,



from which acting and permanent Magistrates and Judges can be appointed. To this end share with us, the responsibility of identifying experienced lawyers with potential to participate in future aspirant Judicial Officers' programmes.

I continue to lament the paucity of real change in the country's instruction giving and briefing patterns to facilitate the somewhat equitable and meaningful distribution of work which will in turn strengthen our efforts at judicial transformation.

Transformation of the South African Judiciary is our collective responsibility as lawyers, and as a nation. We know that the practices of women and black male lawyers were severely undermined by the economic imbalances brought into being by the apartheid system. The Judicial Service Commission and the President are enjoined by the Constitution to ensure that the judiciary "reflects broadly the racial and gender composition of South Africa" when judicial appointments are made.

Our white compatriots who are still comfortably in control of the economy of this country channel their instructions and by extension briefs, to fellow white people. Although the State Attorney does give some briefs to Black Advocates, most of the commercial cases of substance are given to white male Advocates, talk less of the fate of Black Attorneys.

This means that if the nation does not see it as its responsibility too, to ensure that as we brief advocates, women and black practitioners also receive a significant and fair share of the cake; so as to build capacity in that way, the appointing authorities could, in due course, be left with no



choice but not to appoint, or appoint whoever is available in order to comply with the above constitutional imperatives. You and I know what that would do to the confidence that the public ought to have in the Judiciary.

If you examine the records of the Constitutional Court in particular, you will discover that at least 90% of counsel who appear before us are white with an occasional appearance of a white female junior counsel. Disturbingly, even some government departments and parastatal institutions regularly allow exclusively white legal teams to be appointed. I don't want to belabor the point at the expense of spoiling a good thing, but I will not keep quiet about this matter, even if it were to attract the severest of criticisms, until there is a meaningful change in the way parastatals and big business give work to Attorneys and to Advocates as well.

Your voice, therefore, must continue to be heard in addressing the skewed distribution of quality constitutional and commercial work, which as you are well aware; is detrimental to the intellectual and economic well-being of Black and female lawyers in particular. For; there will be no meaningful social and economic transformation for as long as the plight of Black and female legal practitioners; is not rightfully addressed. And this extends to the transformation of the Judiciary.

Let me turn now to a subject I am sure is a sore-point which I nonetheless feel obliged to raise. The proliferation of misconduct cases involving both Attorneys and Advocates, on which I deliberately choose not to dwell; should be a matter of great concern to you as a professional body, as it is to us, as the Judiciary.





I urge you to find a more effective way of arresting this matter proactively. It has the potential to tarnish the reputation of the profession in more ways than we can imagine.

It is important that we all work hard to strengthen and maintain the reputation of the legal profession, as the honourable profession that it was established to be. We often interview Black practitioners with less than commendable disciplinary record and this must come to an end.

Continue instilling in each other, professional ethics of the highest standard. Efficiency enhancement workshops should be fairly regular, notwithstanding your busy schedules. And the public should never have a good reason to doubt your professionalism, competence and overall integrity.

Having said this; let me commend you for not allowing BLA to be argued-out of existence and to be rendered obsolete and irrelevant. I say this because nowadays, there is a populist culture that continues to permeate our existence where approval seeking has become the order of the day. People are afraid to stand up for what is right – for fear of offending or upsetting a prevalent populist culture or attracting recycled criticism from the usual suspects.

I wish to urge you today; not to capitulate to those tendencies. You must speak out against wrong-doing; speak out against any acts of corruption – regardless of who is involved and what is at stake. And speak out against the deliberate distortion of facts that has become common these days in the public domain. If you do not speak out, then you will be guilty of connivance and history will, accordingly, judge you harshly.



The BLA exists to encourage members of this esteemed profession to uphold high professional and ethical standards, and to enforce them decisively whenever the need arises. In this regard, the BLA therefore has a critical role to play in the life of South Africans, at all levels.

In conclusion, let us regard the courts of this country as belonging to all of us. And always remember that you can never be an esteemed lawyer if the legal system within which you function does not enjoy the confidence of the overwhelming majority of the citizenry, including the poor, not just the rich and educated. We owe it to our country and to posterity to protect our justice system and to do all that it requires to function well. Please keep on cautioning us where you think we are falling short, and could use some improvement. Monitor the implementation of our programmes very closely and challenge us if we do not deliver on our promises.

Many countries in the continent and elsewhere in the Diaspora look up to South Africa for guidance and leadership and this is the role that I believe that the BLA is also poised to assume with great distinction. To paraphrase our icon, former President Nelson Mandela: “with freedom come responsibilities”. It is that heavy sense of historical responsibility that we all have to shoulder – and I know that through organisations like the BLA we do possess the conviction, courage and determination to carry these responsibilities with distinction.

I wish you successful deliberations throughout your meetings this weekend.

Thank You