



Speech on the occasion of the Annual General Meeting of the Law Society of South Africa

Mogoeng Mogoeng, Chief Justice of the Republic of South Africa 26 March 2012

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Members of the Office of the Chief Justice

Fellow South Africans, good morning.

My heart always bubbles with joy whenever I receive an invitation to attend an event organised by any component of the broader justice family. And that applies to this august gathering. I therefore consider it



a privilege and an honour, not only to attend this meeting, but also to be allowed to share my views with you about the state of the family to which we all belong.

My joy is borne out of a deep appreciation of the critical importance of communication and engagement, on matters of mutual interest, in cultivating sound relations; diffusing whatever tensions might have otherwise arisen; and fostering a collective commitment to serve our country to the best of our ability. As I was noting the thoughts I am about to share with you today, I began to consider the various objectives sought to be realized through the establishment of the Law Society of South Africa.

The LSSA exists in order to be the voice of the voiceless in court, and, in any undertaking where anybody would be well-advised to enlist the services of those with the legal know-how. Attorneys exist to speak for those who have something to say, but simply do not know how to say it or even those who ought to say something but do not know that they are supposed to do so. Small and big businesses, parastatal organisations and even government departments cannot function effectively without you. Courts are no exception. They are frustrated without the involvement of your members. It is for this reason that we often call upon you to assist the indigent on a pro bono basis. This body also exists to ensure that credible structures are put in place to test the capabilities of those desiring to be attorneys before they can be admitted as attorneys of the High Court of South Africa. You exist to protect the public from some of the predatory tendencies that sometimes rear their ugly heads in the profession. The LSSA exists to encourage members of this esteemed profession to uphold high professional and ethical standards, and to



enforce them decisively whenever the need arises.

The LSSA therefore has a critical role to play in the life of South Africa at all levels.

It is important that we all work hard to strengthen and maintain the reputation of this profession, as the honourable profession that it was established to be. Reports of dishonesty, embezzlement of trust funds, crass over-charging and any other stigma of dishonour that may seek to attach itself to this noble profession must be dealt with decisively. And to do so in a way that would not compromise the profession, requires proactive action.

Continue with your programmes designed to imprint professional ethics in the minds and hearts of your members. Efficiency enhancement workshops should be fairly regular, notwithstanding your busy schedules. And the public should never have a good reason to doubt your professionalism, your competence and your unity as professional people from different backgrounds, notwithstanding our deeply divided past. A proliferation of misconduct cases, on which I deliberately choose not to elaborate, should be a matter of great concern to you as a profession, as it is to us, as the Judiciary. Find a more effective way of arresting it proactively. For it has the potential to tarnish the reputation of the profession in more ways than we can imagine.

The LSSA is duty-bound to look after the broader interests of the attorneys' profession, and to do so well. This brings me to some of the concerns I have about the state of the profession.

The last time I checked, the unity and formal restructuring that is so important to the proper functioning of the attorneys' profession had not



yet been achieved, particularly in some of your constituent structures. What comes to mind naturally is the disunity of the profession in my own home province, the North West. The Bophuthatswana Law Society and the Law Society of the Northern Provinces still share oversight responsibilities over the profession in that province. Unity could, notwithstanding my efforts some time in 2008, I think, not be achieved between these professional bodies, one representing predominantly black practitioners, whereas the other represents a predominantly white constituency. I would be delighted to be told that my information is outdated or that the solution has been found and the problem is about to be a historical footnote. Seventeen years is too long for this state of affairs to still be lingering on.

Similarly, the Legal Practice Bill has been hanging over our heads for too long. As I understand it, the critical challenges can only be resolved by the organised professions themselves. If this is correct, then I believe that the collective leadership of the LSSA and the General Council of the Bar are possessed of sufficient wisdom to resolve the sticky issues. My penny's worth of advice is that you both focus on and allow yourselves to be driven by what would be in the best interests of the nation more than what may be more beneficial to either of the two professions if you have not already done so. Prioritise what is of mutual interest and benefit, what would allow both professional bodies to be more effective, and put aside what divides you for future attention. The Judiciary has decided not to get entangled in the issues that divide you to avoid having to take sides. We choose not to interfere because we are confident that you are well able to resolve your differences, however difficult and frustrating they may be.



I believe that the court system would benefit more from structured engagements between the LSSA's constituent structures, and the Magistracy, the NPA, Legal Aid South Africa, SAPS and other key role players in the justice and security cluster, about matters that impact negatively on cooperation and court performance. Our engagement with each other as the profession and the Judiciary should not be confined to the meetings you occasionally have with the Chief Justice and some of the Heads of Court. It must rather cascade to every level of our operation. We must buy into the idea that we are one big justice family whose interests are so inextricably linked that we would do well to seek solutions to almost all challenges at every level of the court system together.

I was moved by what you have reportedly done recently. On the assumption that the media reports are correct, you issued a statement on the disciplinary hearing and dismissal of Justice Masuku of the Swaziland High Court. I deduced from this that the LSSA really does appreciate the important role it also has to play in ensuring that members of the Judiciary of South Africa and the Southern African region enjoy both individual and institutional independence as they should. That is much appreciated. Going forward, you may wish to run some of these laudable efforts by the Judiciary, just to find out what the challenges are, where we stand on them and whether we are going to do something about them or not. This I say on the understanding that the Judiciary would generally be loath to comment on matters affecting the organised profession elsewhere, without first taking you on board. I am also fully cognisant of your institutional independence and your right to comment on any matter that seems to cry out for a reaction, without necessarily requiring permission from anybody. It is simply a recognition of the importance of cultivating



a functional and cordial relationship that enjoins me to allude to the desirability of this approach.

Talking about the matter relating to the Honourable Judge Masuku, the Judiciary had, before I became Chief Justice, tasked one of us to contact the Chairperson of the SADC Forum of Chief Justices, the Honourable Chief Justice Sakala of Zambia, to find out what, if anything, has been done or is intended to be done, by the Forum of Chief Justices since the matter involves the Chief Justice of Swaziland. We have not yet been informed of the outcome of that enquiry, if the mandate was carried out. However, a meeting of that Forum is scheduled to take place in Mozambique in due course, and a way will and must be found to raise and hopefully address issues in the region that affect the organised profession and the Judiciary in particular. I am confident that the SADC Forum of Chief Justices will, starting with that meeting, be poised to assert its authority in these matters.

As key roleplayers in the justice system you need to be apprised of some of the latest developments in the Judiciary. Already you are aware that, following your concerns which were also echoed by some Judges, the Bar, magistrates and politicians, the South African Judicial Education Institute has now been up and running since January 2012. Judges, Regional Court Magistrates and District Court Magistrates were beneficiaries of the SAJEI training in January 2012. We are finalizing arrangements for the training of aspirant Judges and another group of newly appointed Magistrates, and continuing judicial education for all Judges to be held in the course of this year. The importance of your role in the identification of those who have demonstrated the potential to do well as judicial officers, for the aspirant Judges training programmes, cannot be



overemphasized.

What kind of training does the Judiciary need? We do not want training for the sake of training. You will recall that the public is constantly complaining in the media, through the Presidential hotline and at imbizos about poor court performance, which includes postponements which are reportedly granted with ease, the hours we spend in court, the delays in the delivery of reserved judgments, case backlogs and other issues affecting the efficiency of the courts, which suggests that judicial officers in positions of leadership could benefit immensely, from some leadership training. Our training and educational programmes therefore ought to be and are designed to enhance the efficiency and effectiveness of the courts. There is a need for capacity building and a proper monitoring of court performance through, tested and reliable performance measurement tools.

It is therefore important that the attorneys' profession helps us to create a dependable pool of practitioners, including both attorneys and advocates, from which acting and permanent Magistrates and Judges could be appointed.

To this end you must, as I indicated earlier, make it your business to identify experienced lawyers with judicial potential who could be brought into the aspirant judicial officers' programmes. There is a related matter which, though it is sensitive, is of such importance that I must raise with you. I do likewise with your clients whenever occasion permits. And that is your briefing patterns.

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. This means that if we do not see it as our responsibility too, to ensure that as we brief advocates, women and black people also receive a significant and fair share of the cake, and 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.

To avoid that undesirable and yet potentially unavoidable eventuality, please let us change our briefing patterns. If you check 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 propose, knowing that you are often told by your clients who they want, that you seriously consider offering them some courteous and possibly guarded advice to consider roping in black juniors in cases where a white senior counsel is appointed, so that they can learn from their more experienced colleagues in preparation for the future of our country. 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 the briefing pattern in general.



It is important that caseload management structures be established where none exist and strengthened where they exist. You would recall that these fora exist at a District Court level, with the Head of Court as the Chairperson. Members are the representatives of 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 a Judge President or a Judge designated by the Judge President. What we do not have is a national caseload management structure in which all key role-players are represented. We only have the one comprising Judges which I used to chair before I became Chief Justice, now chaired by the Deputy President of the Supreme Court of Appeal, the Honourable Justice Mthiyane, who was a member while I was the Chair. We have identified the need to establish a forum comprising the Chief Justice, the NDPP, Ministers or Directors General of the Departments of Public Works, Health, Social Welfare, SAPS, Correctional Services and the Chairperson of Legal Aid South Africa to oversee all caseload challenges in the country and find solutions. It is, however, yet to be fully discussed and established. This means that, once established, provincial structures would then report to that national structure to coordinate caseload activities and address challenges that have proved to be too difficult to resolve at provincial levels. Needless to say, these structures are meant to facilitate the internal speedy resolution of problems or disputes that compromise court performance.

In addition to the above, just on Friday, 16 March 2012, and in the furtherance of our plan to implement the resolutions of the Access to Justice Conference of July 2011, the Heads of Court passed resolutions adopting uniform practice directions to facilitate the implementation of



judicial case management. This model has proved to be effective in facilitating court efficiency. At the same meeting, we adopted the proposals for the transition of the Office of the Chief Justice from a National Department to a fully independent Agency created by statute, answering directly to Parliament, like the Auditor-General. It is, however, the CEO of the Agency who would have to account for the administrative functions of the Agency and its budget.

Additionally, it may interest you to know that through memoranda of understanding the Minister for Justice and Constitutional Development, Minister Jeff Radebe, has proactively transferred personnel and the administrative functions of the Constitutional Court, Supreme Court of Appeal, Magistrates' Commission, the Judicial Service Commission, SAJEI and elements of the Rules Board to the Judiciary through the Office of the Chief Justice. An implementation process is underway to effect the transfer.

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. I was impressed by the keen interest in the Judiciary displayed by your delegation that met me in October 2011 in Cape Town. They wanted to know why SAJEI was not offering training to Judicial officers including aspirant Judges. That added to the impetus we already had to do everything within our power to deliver training to judicial officers. 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. For empty promises should never be made, nor tolerated.

May you have a very successful Conference and Annual General Meeting.

Thank you.