



Speech during the Magistrates Commission Quarterly Meeting

Mogoeng Mogoeng, Chief Justice of the Republic of South Africa 30 March 2012

Chairperson of the Magistrate Commission, the honourable Mr Justice Legodi; Deputy Minister of Justice and Constitutional Development honourable Andries Nel; Justice Yvonne Mokgoro, Judge in the Office of the Chief Justice, honourable Members of Parliament, other esteemed commissioners, government officials present, ladies and gentlemen; good morning.

I am grateful beyond measure for the privilege to attend this very important gathering and the added honour of being allowed to raise with you some of the concerns I have about the Judiciary in general and the Magistracy in particular and to share with you the progress we have recorded and where we are heading as the Judiciary.

Perhaps I should begin by noting how privileged we are as Judicial Officers to be charged with the constitutional mandate to determine or resolve disputes between parties in this great nation. That is an enormous responsibility which presupposes that we are possessed of special skills and expertise to resolve disputes that are brought to us, however complex they may be.

This assumes capability and wisdom of great proportion and poses a very serious challenge to us and enjoins us to equip ourselves accordingly, so



that we are never found wanting by other practitioners, or the general public, in the execution of our duties. It ought therefore, to be a matter of grave concern to us as the judiciary that other practitioners and the public are forever complaining about the following:

- The regularity and ease with which postponements are granted.
- The disappearance of files or records in courts where we are in charge.
- The number of hours we spend in court whether all the witnesses, parties and legal representatives are present or not.
- The hours which we are reported never to work past; particularly on Fridays or the 15th of every month.
- The alleged apparent lack for readiness for trial by some Judicial Officers.
- The alleged lack of understanding of the issues.
- The allegedly discourteous exchange with witnesses, the parties or counsel.
- The questionable quality of our judgments.
- The unavailability of Heads of Court for adjudication of cases which is the core business of any Judicial Officer.

Maybe I need to pause here and elaborate a bit. When I first met the Magistrates, and subsequently the leadership of the Magistracy; I raised a very sensitive matter: I knew it was very sensitive but I believed that I would be failing in my duty as Chief Justice if I did not raise it.

For quite some time now; there have been complaints that; however diligent a Magistrate may be disposing of so many cases in a day; as soon as he or she is elevated to the position of Chief Magistrate or Regional Court President; that is the last time you will see him or her presiding. But when it is time for workshops or conferences or meetings of any nature,



then you will find them there. Maybe this is not founded; but the regularity and intensity of the complaint has given some of us reason to want to raise this issue so that we can find a more cordial way of confronting it head on, so that the backlogs that we know exist, can be addressed with all the resources at our disposal.

Remember we do not have the compliment of Judicial Officers necessary to carry out the work-load that we are charged with. Therefore we cannot be seen or even be suspected of not being available to carry out our core business as Judicial Officers. So I want to leave this challenge with the Commission to reflect on; so that going forward, this issue may be resolved – especially in so far as it will assist us with case backlogs.

Whether these allegations are founded or not as I said; they should give us as Judicial Officers and the Commission reason to be deeply concerned and they call for very serious individual and collective introspection. The situation does not seem to permit a defensive posture.

The public is our client or customer and the customer is – as business people put it – is always right. And the customer is no doubt unhappy with our performance. This is reinforced by the latest performance measurement report which was recently circulated by the Minister of Justice and Constitutional Development to all Heads of Courts; which shows that our performance is less than satisfactory and is in fact deteriorating in comparison to our underperformance of years gone by. This is obviously not the time for accusations and counter accusations, nor is it the time for adopting a holier than thou attitude towards one another. It is rather time to come to terms with our less than satisfactory performance and identify a remedial course to follow. May we consider



the following; as but only some of the remedial steps open to us. We need to make the most of our time in terms of sitting in court from about 09:00 am until 16:00.

Just by way of an example: When I was a Trial Court Judge, particularly when I was on Circuit Court; I would generally sit in court from 8 am or 9 am until as late as 21:00 just to make sure that no case was postponed particularly in circumstances where everybody needed was available for the trial to be proceeded with. Most of my colleagues adopted the same work ethic. With the result that if you check the statistics, the North West High Court has, for many years, been hovering over the number one spot in terms of performance nationwide.

I say this not to blow any trumpet but simply to make the point that where there is a will there is a way. What this boils down to is that we have to make a conscious decision to cultivate and maintain an unquestionably high work ethic. It is our duty as Judicial Officers to find a way to enforce the practice of trial readiness in relation to all court process participants; including ourselves, as a matter of routine.

We must also equip ourselves to discharge our judicial functions well and to enhance our capacity to carry out our duties efficiently on a regular basis or at all times. Those of us who play an oversight role over fellow Judicial Officers would do well to preside over cases regularly so as to appreciate better the challenges that our colleagues face and develop strategies informed by what is in fact happening in the courts at that time which would solve the problems that undermine our performance.



And maybe I may just add here that as I engage my colleagues in this sensitive matter of whether they are sitting or not sitting; I said I know that generally every Judge President sits in court, notwithstanding the administrative functions that he or she has to carry out and so does the President of the Supreme Court of Appeal and the Chief Justice.

If they can sit in court over and above their administrative functions; then so can any colleague that is a Head of Court, or the Head of any Magistrate's Court. So there is no design to condemn anybody and all I'm saying is that we are in this together. We are a family; let us join hands; focus on the solutions that can remove the shame in relation to our performance from our names and our esteemed profession. All these challenges would largely be addressed through judicial training and educational programmes which target issues such as trial management.

We had a powerful programme on civil and trial management and the role of the Judicial Officer in a constitutional democracy which was extended country wide a few years back. We saw the fruits of that programme. Performance was improved as a result. So maybe it is time that as we develop training programmes for the Judiciary; trial management, both in civil and criminal matters, should be meaningfully factored into those designs.

Allow me to talk here about **Judicial Case Flow Management**: And maybe I need to explain it because we are on the verge of launching this in at least four High Courts, from around June or July this year. People are afraid of anything with a fancy name and often think that it is new when in fact it might have been around for some time.



In every court, be it the High Court or a Magistrate Court; when a case has got many litigants, or many accused persons and there are so many charges or claims involved; or in a very complex matter: What normally happens as a matter of course in all the courts is to 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 judicial case management.

So, at the earliest possible stage, probably even shortly after filing, the Head of Court is approached to appoint a Judicial Officer who would make sure that the practitioners are ready. In that case, the parties would not push for a postponement on the date of trial because they were not ready or because the documents were not exchanged on time, or because they still had 40 witnesses when they should be having 10. They could even debate some of the legal issues which were likely to detain them forever and find out if there was no easier way of resolving them without spending days opening law reports and other authorities.

We have seen it recently in the Pretoria High Court when 13 or 14 advocates were charged in the Road Accident Fund misconduct matter. It moved so very fast and in no time, the matter was resolved. We saw this many years back in the old Bophuthatswana. A judge was identified timeously and practitioners were always working with this judge to make sure that everything that needs to be ready for the purpose of the trial was ready.

More importantly (with this model); the pace of litigation is brought back into the hands of the Judicial Officer. So, (if we do not implement judicial case flow management and) when the public blames us saying you are



failing the nation; then we would truly be failing the nation because the power that we need to run the system effectively is in our hands. However, what is happening now is that the pace of litigation is dictated by the litigants. They give one another all sorts of indulgences and they approach the Judicial Officer saying, by consent, may this matter be postponed to a date six months to come.

And people daily, in the media ask whether this is justice and they do not blame the practitioners really, they blame Judicial Officers because they are supposed to be in charge. So, judicial case flow management, which as I said we are on the verge of launching, based on the decision we took as the Heads of Courts on the 16th of March this year; is going to be implemented on a higher scale, at a higher level around June/July.

It has been implemented, by the way, because of the road map that the Judicial Case Flow Management Committee presented to the Heads of Courts; back in 2010. And the reports that we received on the 16th of March, were that it is working very well, particularly in the Western Cape, North Gauteng as well as KwaZulu-Natal and the North West.

So the fundamental difference between our attitude towards Judicial Case Flow Management in South Africa; and jurisdictions like Botswana and the United States of America; is that we only use it in rare cases. When we think a case is going to attract a lot of publicity; a lot of public interest; then we apply judicial case management. It should not be. What is good must apply to every case and this is what we have decided to promote vigorously.



Judgment writing; is one of the areas in which training is called for so that we do not have a judgment reserved for a year or even six years because a colleague simply does not know how to find his or her way around the complex issues confronting him or her.

Leadership in a court setting; this is also important. You can never run anything, even your own family except if you made it your business to familiarise yourself with the fundamentals of leadership. Often, we get appointed from the Bar, the Magistracy, the academic world, or from the side bar; to judicial office and nobody tells us after a few years of being appointed to higher office; a position of leadership; how to lead. You just fend for yourself and when problems arise in a court setting and we are not able to address them as speedily and effectively as we should the nation gets up and asks: what is wrong with these people?

We never get trained on leadership matters. We do not know what it means to lead and to assume that just because you are in a leadership position somehow, leadership capabilities will pour down on you is a myth, it can never be. Now it is for that reason that I say; if we are to bring about the kind of radical change that our courts require in light of the under-performance; our judicial leaders would do well to allow themselves to be trained in the area of leadership – just as other leaders who are effective exposed themselves to either mentorship programmes or worked as closely as possible with those who are in leadership positions, in the settings in which they are.

For example, the Deputy Minister may be working with the Minister and other senior politicians to gain exposure to the techniques and principles of leadership.



Turning to Judicial ethics; we need to pay special attention to judicial ethics, independence and accountability. For quite some time now, we have made everybody understand just how independent we are, individually and institutionally. And it must be so, but accountability comes with it. It cannot be independence all the time, we must also account as Judicial Officers. We account through our judgments, but I think there will come a time where we will have to engage the public in some way, I should be giving an example here but I do not think my time allows me to go there.

Other issues I wish for us to look at include: discipline, integrity, collegiality, social context and a measure of courtesy or civility because if you have the latter; then you will know how to relate to witnesses, how to relate to the practitioners in court and how to relate to colleagues at all levels. It will not be like during our times as practitioners; when a Judge could simply say to you: “are you foolish?” or “are you drunk?” in the presence of the public. Civility is called for if our courts are to be as truly accessible and user friendly as they ought to be.

There are, in my view, far too many training programs taking place within the Magistracy. Some are run by the Justice College, others by the Directorates within the Department of Justice and Constitutional Development, others by Nadel, BLA, International Association of Women Judges, JOASA, ARMSA, the Magistrates themselves having organised in one way or the other and the Commission; and yet court efficiency is yet to be realised.

I urge this Commission and my colleagues serving in this Commission to consider how best to manage these programmes as well as the overlaps



that currently exist.

This would help us to free the time that Magistrates should be investing in their core function from being used for training. We need to cut down on these programmes and focus on a few which address the areas mentioned earlier. Our preoccupation should be with training programmes that would help us perform better. To achieve these objectives; they should be conducted by people who have the expertise in areas in which they lecture or facilitate.

In addition to training; we need very efficient performance assessment personnel and tools. Our quality assurance officers must not only be selected and appointed from among our best Judicial Officers but they must receive additional training. Their main area of focus must be court performance, before the public complains about excessive postponements or any other impairment to court efficiency. Quality assurance personnel and the Heads of Courts must identify those weaknesses, their causes and how to address them properly.

Reliable information in relations to our performance must be readily available to facilitate self-evaluation and self-correction by the judiciary. We should not wait for the Minister's report before we can tell how we are doing as the Judiciary nationwide. It must be possible to identify which court is not doing well, who in that court is doing their best and who is not pulling their weight.

There are courts in other jurisdictions like in the US where the performance of Judicial Officers is displayed on a public notice board. We may have to move in that direction in due cause but first things first: Let us build the capacity to do well, unleash our potential, clear the



debris as much as we can and only then explore the possibility of naming and shaming ourselves.

Let me just add something here, I am very impressed by the very concept of quality assurance. It is something that needs to be refined and developed further so that it can be extended to the High Courts and to the personnel in the Office of the Chief Justice. Because I think I have seen what it is that would cause beautiful plans, beautiful programmes to be well documented and yet come implementation, nothing happens. You unveil it; everybody gets excited, five, 10 years down the line; nothing has happened. The way to avoid that is to make sure that every step of any programme is properly monitored; that there are time-lines and people who can tell whether something is being done properly, correctly or not. Let me just give you an example; at the Judges National Conference in 2009; former Chief Justice Sandile Ngcobo and I were appointed to monitor the implementation of the conference resolutions. We then set up a monitoring committee and one of the sub-structures of that monitoring committee was the case flow management committee. We also agreed that this was going to be the engine that will drive the implementation process and out of that we had the roadmap for the implementation of judicial case management. Out of that we had the Access to Justice Conference that was held in July last year and because of that discipline we now also have the Office of the Chief Justice!

There are other things that are supposed to happen, but what matters the most to us; is to make sure that our courts function and that they function well. How do we do that? In June or July this year, we will begin implementing pilot programmes around Judicial Case Flow Management, as I alluded to earlier on; and within the realm of our operation and with



the limited powers at our disposal; we are going to make it happen. That is going to be our focus in the next few months because; we do not want to be heard to be speaking gloriously about this or the other programme and come delivery time, we have got nothing to show for it.

So, in this regard, quality assurance is going to be critical for our performance as the Judiciary. I would like to urge you, at some point, if you could allow me and the Chairperson and the Deputy Chairperson; to come together and discuss what further improvement could be effected to this wonderful quality assurance model that you have, and you could then advise us on how we can improve on it – so that, we could include it in our deliberations as we continue to give meaning to the lives of retired Judges and Magistrates, by bringing them into the faculty of the South African Judicial Education Institute to serve as mentors of our Judicial Officers. So our vision and plan is very clear and we undertake to deliver what we have the power and the resources to deliver on and we need to be judged on that.

Now; you should be aware by now that a Memorandum of Understanding was signed between the Department of Justice and Constitutional Development and the Office of the Chief Justice to transfer some functions to the Office of the Chief Justice. But these things have a tendency to take too long to become a reality and it is for that reason that we focus primarily on what we already have for the purpose of undertaking what we can deliver on and make room for the implementation of the memoranda of understanding and provisions of the Superior Courts Bill and the 17th Constitutional Amendment Bill.



Now let us plan for the new dispensation to be introduced through the Superior Courts Act when it comes into operation because then; a Judge President will have a meaningful role to play in the affairs of the Judiciary as a whole in a province. She or he will exercise oversight over the Regional Courts and the District Courts as well. Limited though it will be; but this change management must be planned for to avoid the potential tensions that could strain relationships and worsen the situation more than it already is in some areas.

Relations between the District Courts and the Regional Magistrates must be improved and harmonised and my colleagues there know what I am talking about, I do not have to elaborate. The importance of that harmony is underscored by the fact that principal and genuine congeniality is a sure recipe for more productive collaborative efforts between all levels of the judiciary. We also need to plan for the body that is apparently going to emerge out of the collapsing of the JSC and the Magistrates Commission or their functions as proposed in the bills.

May we continue to ensure that our judiciary is the best that South Africa deserves.

Thank you very much for your patience and may you have a very productive meeting.