

**THE PAPER TO BE DELIVERED AT THE GALA DINNER FOR G.M  
PITJE MEMORIAL LECTURE ON THE 19<sup>th</sup> OCTOBER 2018 AT  
PRESIDENT HOTEL, BANTRY BAY, CAPE TOWN: “ACCESS TO  
LEGAL PROFESSION: FUSION IS THE WAY TO GO”**

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**1. INTRODUCTION**

As a point of departure I would like to start from the administration of justice being viewed from the global village of the world with respect to the principle of separation of powers in accordance with the theory advanced by Montesquieu on “trias politica”, meaning that there are three categories of politicians in any democratic scenario of governance, legislator, executive and judiciary. There are checks and balances to avoid the three arms to interfere with one another.

The aforesaid separation of powers of relevance today is the role of judiciary as one of them which is also separated into three sub-divisions, being the presiding, prosecuting and defending arms to maintain the balance of the administration of justice, for justice to be seen to be done.

There are guiding principles which have been adopted by international community of nations under United Nations which are to be respected by all the member States of which our democratic South Africa is one of them. There is no country in the world which is exempted from the compliance with the aforesaid principles.

In the field of civil procedure there are still three components such as presiding, plaintiff or applicant and defence for both parties.

I find it suitable to start with the basic principles to be applied to the judiciary in accordance with Basic Principles on the Independence of the Judiciary as adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders at Milan on the 26<sup>th</sup> August 1985. Amongst other provisions are Articles 1 and 2 which state “1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. 2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

As far as the prosecution is concerned it will be realized that there is basic set of guidelines to be respected by the village of nations in the whole world, that is the Guidelines on the Role of Prosecutors adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and Treatment of Offenders, at Havana on the 27<sup>th</sup> August 1990.

Article 1 of the aforesaid Basic Principles provides that “1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications”. Article 2 states “2. States shall ensure that: (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or any other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discrimination to require a candidate for prosecutorial office to be a national of the country concerned.”

Let me come to the relevant section of lawyers, being legal representatives as far as the basic guidelines are concerned as provided in Basic Principles on the Role of Lawyers, adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and Treatment of Offenders, at Havana on the 27<sup>th</sup> August 1990, which amongst others the following principles were adopted: Article “1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”.

“2. Government shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status”. Recently Zimbabwe has contravened this guideline with our colleagues who were refused with appearance in the court.

With reference to the above introductory comments I shall now proceed to the relevant part of the theme: “access to the legal profession: Fusion is the way to go”. As a member of BLA from the date of its formation and coincidentally with my admission as the attorney of the High Court of South Africa, later as the legal practitioner of the High Court of Namibia in 1986, and leading to my admission as Listed Counsel of the International Criminal Court in the Hague in 2006, I will synoptically discuss the BLA origin, growing up through hardships and struggles

under the leadership of the late Godfrey Mokgonane Pitje, who is today honoured by this ***MEMORIAL LECTURE AND GALA DINNER***.

Allow me to take you along the memory lane of the founder of BLA and his short background as it follows hereunder.

## **2. BLA AND ITS ORIGIN**

“As a result of all the difficulties I have discussed relating to practice of law and as our numbers picked up, I called the Black Lawyers together to make common representations to the authorities to be allowed to have offices in town and to be freed from influx control, pass laws, the lot.

The lawyers used to meet in my office. Sometimes there would be three or four or five. The number gradually increased so that by 1978, when Dikgang Moseneke was admitted there were more than ten of us”. These words were uttered by the late G.M Pitje in an interview with one of the friends of BLA from the United States of America before he passed on in 1997. Basically G.M. Pitje was our mentor and father figure in the legal fraternity and African community and his spirit is still living in the circles of BLA till today. May His Soul Rest in Peace.

I still remember going to his office for application for articles of clerkship in 1980 and he had referred me to his Jewish friend attorney Samuel Wade of Germiston who has taken me to serve articles as from 1980 till I left for University of Zimbabwe for further studies and on my return in 1982 he had already gone to Israel, on retirement.

Let me give a summary of the people who were involved in the affairs of BLA in the early days of its formation, including BLA Education Centre as follows:

### **BLA Chairpersons:**

- G.M Pitje, the founding chairperson
- George Maluleka
- Dumisa Ntsebeza
- James Yekiso
- Prof Chabane Manganyo
- Adv T.L Sekweyiya
- Tholi Vilakazi
- Dikgang Moseneke & Others.

### **BLA Directors of BLA-LEC:**

- Sello Monyatsi= 1984
- Godfrey Mokgonane Pitje=1984-1986
- Justice Bakone Moloto= 1986-1992
- Adv. Mojanku Gumbi=1992-1993
- Adv Pansy Tlakula=1994-1996
- Adv. Ishmael Semanya, SC 1996-1997
- Sibusiso Gamede=1997-2001
- Ms Andiswa Ndoni=2001-2006
- Ms Nokukhanya Maluleka= 2007-2008
- Ms Faith Mandiwana= 2008-2009
- Ms Mxoliswa Nakani= 2009-2011
- Kenneth Mapengo=2012-2012
- Ms Andisiwe Segonyela=2013-

### **BLA-LEC BOARD OF TRUSTEES:**

- ADV Mc Caps Motimele, SC.
- Dr Legoabe Willie Seriti, JA
- Attorney Nano Matlala
- Ms Matshego Ramagaga
- Ms Thabang Sophie Kekana
- Justice Nobhulawo Mbhele.J.

### **3. ACCESS TO LEGAL PROFESSION:**

Access to legal profession struggle is from a long time ago and it is still going to take some time going forward to reach final destination as the pace is very slow because the process of transformation is not revolutionary but evolutionary like it is happening in other sectors such as the land distribution and restitution in our beautiful free and democratic country with the best reasonable Bill of Rights. The right of access to the legal profession is a very sensitive matter which needs to be handled with care to avoid bungling in the process of unbundling of certain big legal firms which are almost 200 years old as compared to same Black legal

practices which cannot be as old as 50 years in accordance with the present standard of giving long and excellent awards by the Law Society of South Africa and its components of provincial law societies which are outgoing as from the 31<sup>st</sup> October 2018 to give way to the incoming Legal Practice Act in terms of Act 28 of 2014 as from the 1<sup>st</sup> November 2018. Let us hope for the best.

There was a hope that the new Act for administration of the legal profession will get rid of the unnecessary and uneconomic division between attorneys and advocates in which the poor, who are incidentally Blacks, cannot easily get access to justice because of the double payment to lawyers for the same service. There is still separate rolls of attorneys and advocates in terms of sections 24 and 25 of Legal Practices Act 28 of 2014 and further classification of advocates as senior Counsel and junior counsel. There is still a long way to travel in order to reach the destination and distance where our neighbours like Zimbabwe and Namibia are at the moment. However, since every situation which is created by the legislation is amenable to be amended by the same as time goes on, we hope that the BLA will pull its socks up and see to it that the coming Act 28 of 2014 is being amended from time to time till it reaches the stage where it will be acceptable to the demographic majority of our population., without confusion but with fusion as the only way to go. I wish the new Legal Practice Council goodluck.

#### **4. FUSION AND NOT CONFUSION AS THE WAY TO GO:**

As I have already indicated above that the access to the legal profession is about to be achieved, BLA must go on with its spirit of fighting for its members' rights relentlessly. The time has come that we use the foundation which was built by the late G.M. Pitje and his colleagues of the time when the pass laws and racial segregatory regulations were the order of the day to much forward to achieve fusion of the legal profession without causing confusion. There is no any other way to reach our goals except to have rich libraries and advanced technologies to acquire legal knowledge as the best tools and weapons to get out of perpetual morass in the legal profession, with fear, favour or prejudice.

#### **5. IN CONCLUSION:**

I still remember the concepts and philosophy of the natural instinct for survival that the late G.M. Pitje taught us during the first entry in the legal profession in early 1980's when he said that "Young men, please be aware that the legal profession for a Black Lawyer needs to be approached with constructive bravery and sustainable

arrogance, blended with maximum calculated risk". This has led me to commit the so-called contempt of court for about four times in Boksburg, Benoni, Germiston and Johannesburg in which I was acquitted on review in all of them.

With these few words I say let BLA live forever as the founder thereof Godfrey Mokgonane Pitjie's spirit is still alive with us-Long live BLA long live-Aluta Continua! I thank you.

**THOKWANE P. MOLOTO, LL.M, LC (ICC)**