



THE LAW SOCIETY OF BOTSWANA



PRESS RELEASE

A CALL FOR THE IMMEDIATE RESIGNATION OF THE CHIEF JUSTICE

A dark cloud hangs over the judiciary. The recent developments at the judiciary have further deepened the crisis that was already there. The country's judiciary has for many years been lauded for its independence and its integrity. It has generally enjoyed public confidence. This public confidence has been greatly eroded over the last several months. Regrettably, the head of the judiciary, the Chief Justice has done little to safeguard the image of the judiciary and to arrest the rot that continues to spread at an alarming rate.

Over the last several months, the Chief Justice has engaged in acts that have brought great harm to the image of the judiciary. The manipulation of allocation of cases by the Chief Justice, in high profile disputes and matters in which the executive has an interest, has previously been highlighted by the Council of the Law Society as a matter of grave concern to the legal profession. The Chief Justice is on record seeking to justify allocating a politically sensitive case, during court vacation, concerning the issuance of search warrants, to Justice Gabanagae, even though he was not the vacation judge, on the basis that the matter required a senior judge. The Chief Justice made this assertion notwithstanding the fact that Justice Gabanagae is a relatively junior judge. We have noted that since the Chief Justice ascended to office, Justice Gabanagae has on many matters of public interest, where a full bench has been impaneled, inevitably been asked to form a part of the panel. This raises questions as to what the basis for him being consistently preferred is.

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It therefore came as no surprise to the Council when Justice Gabanagae was chosen ahead of all other judges, by the Judicial Service Commission to chair the Delimitation Commission. Appointments that are not based on any objective criteria only serve to discredit the independence of the judiciary. The Law Society has for the last several years challenged the JSC to become more transparent in its decision-making. A transparent decision making process would limit complaints and suspicions of appointments based on favoritism ahead of merit.

Currently, it seems that decisions of the JSC are not based on what is in the best interests of the public but are rather calculated to appease the executive. The JSC's recent decision to recommend Justice Tebogo Maruping ahead of other more experienced, and efficient judges of the High Court and Industrial Court is testament to the fact that merit is no longer a consideration in the JSC's decision-making process. We expect any person holding the office of Chief Justice to use his position as chairperson of the JSC to ensure that there is a credible process of appointment that results in the best men and women available to serve the nation being appointed to the bench rather than those that those seemingly wanted by the executive.

Over the last several months social media accounts under various pseudonyms have been used to attack the integrity of judges. Justice Reuben Lekorwe was attacked and labelled an opposition judge after he delivered a well-reasoned judgment that was unfavorable to the Directorate of Intelligence and Security and the establishment. The same attackers have been quick to praise the executive. All indications suggest that the operatives of the social media accounts are security agents advancing a nefarious agenda of the executive. Not once did the Administration of Justice come to his aid. Judges should not have to defend themselves against unfounded and scurrilous attacks. Justice Ketlogetswe, following his judgment in the Dr. Matsheka case, and his recent complaint against the Chief Justice, has also been attacked by the same operatives through the use of a social media account operated by the state, and labelled a cadre of the Botswana Congress Party ("BCP"), who was part of the group that took part in the violent Botswana National Front Congress that precipitated birth to the BCP. Ironically,

instead of defending the members of the judiciary against these scurrilous attacks, the Chief Justice in his response to Justice Ketlogetswe's complaint has joined these attacks and accused Justice Ketlogetswe of being an opposition operative. One would expect that the Chief Justice would issue a statement and call for a cessation of these attacks on members of the judiciary rather than join the attacks.

There is disparity in provision of security protection by the executive to judges of the High Court, with those that are favored by the executive receiving more security than other judges. It is a matter of public knowledge that Judge Gabanagae receives greater security protection than other judges. Disparity in treatment of judges destroys any perception of independence. It creates the impression that those who are willing to deliver for the executive will be looked after.

The Council of the Law Society has recently received a copy of the complaint that Justice Ketlogetswe submitted to His Excellency the President of Botswana in respect to the alleged attempts by the Chief Justice to influence him, in the habeas corpus application that was filed on behalf of Dr. Matsheka by his wife. We have also had sight of the response of the Chief Justice and Justice Ketlogetswe's reply. The letters have caused great anxiety to the Council of the Law of Society Botswana. The allegations contained in the complaint, if true, represent the worst form of misconduct that any judicial officer can engage in. The Council is in the process of urgently getting legal advice on what steps it can take to ensure that the complaint is properly investigated and appropriate action is taken either against the Chief Justice, if the allegations against him are proven to be true, or Justice Ketlogetswe for making false allegations against the Chief Justice, if his allegations against the Chief Justice are proven to be false.

The Council is currently considering all options available to it, in an attempt to assist in the restoration of the integrity and the reputation of the judiciary. The public will be kept informed of any decisions taken by Council in respect of the above. The degradation of the rule of law, in any society, marks the onset of

tyranny. It is the duty of every citizen to standup for the protection of judicial integrity.

Notwithstanding that the veracity of the allegations made by Justice Ketlogetswe has not yet been determined, the Council is of the humble view that it is in the best interests of the nation that the Chief Justice voluntarily steps down from office. The reputation of the judiciary has been irreparably damaged, and there is urgent need for a new leader to steer the ship in a different direction. There is need for new Chief Justice, not in love with appeasing the executive, but one who is addicted to the rule of law and safeguarding the independence of the judiciary and having it insulated from all forms of interference.

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