

SPEECH DELIVERED

BY

**HONOURABLE MR. JUSTICE
T.E.MONAPATHI, ACTING CHIEF JUSTICE**

**TO MARK THE CEREMONIAL OPENING
OF THE HIGH COURT SESSION,**

**DELIVERED ON MONDAY,
3RD FEBRUARY, 2014**

HIS MAJESTY KING LETSIE III

THE RIGHT HONOURABLE THE PRIME MINISTER DR. THOMAS MOTSOAHAE THABANE

THE HONOURABLE PRESIDENT OF SENATE

THE HONOURABLE SPEAKER OF THE NATIONAL ASSEMBLY

THE HONOURABLE ACTING PRESIDENT OF THE COURT OF APPEAL

HONOURABLE JUDGES OF SUPERIOR COURTS

THEIR EXCELLENCIES MEMBERS OF DIPLOMATIC MISSIONS

THE HONOURABLE ATTORNEY- GENERAL

THE MAYOR OF MASERU CITY

PRINCIPAL AND WARD CHIEFS

CHAIRPERSONS OF: THE PUBLIC SERVICE COMMISSION

THE INDEPENDENT ELECTORAL COMMISSION

THE TEACHING SERVICE COMMISSION

THE GOVERNMENT SECRETARY

THE OMBUDSMAN

THE DIRECTOR OF PUBLIC PROSECUTIONS

BARUTI BA MOSHOESHOE

LEADERS OF POLITICAL PARTIES

PRINCIPAL SECRETARIES

THE REGISTRAR OF THE HIGH COURT AND COURT OF APPEAL

HER WORSHIP THE CHIEF MAGISTRATE

HER HONOUR THE PRESIDENT OF THE LABOUR COURT
THEIR HONOURS JUDICIAL COMMISSIONERS
DEPUTY AND ASSISTANT REGISTRARS
THEIR WORSHIPS LEARNED MAGISTRATES
CROWN COUNSEL
JUDGES CLERKS
THE ARMY COMMANDER
THE COMMISSIONERS OF POLICE, INTELLIGENCE, AND
CORRECTIONAL SERVICES
THE ACTING VICE-CHANCELLOR OF THE NATIONAL UNIVERSITY OF
LESOTHO
KING'S COUNSEL AND SENIOR COUNSEL
MEMBERS OF THE BAR AND SIDE-BAR
MADAMS AND GENTLEMEN ASSESSORS
INVITED GUEST, LADIES AND GENTLEMEN

May I kindly ask you, on behalf of the entire Judiciary of this Kingdom, to bid you welcome to the Ceremonial Official Opening to mark the beginning of the Judicial Calendar New Year 2014.

The year 2013 was remarkable, like all the preceding years, in that it marked the continuation and beginning of a number of activities, in the Judiciary.

[1] OBITUARIES

It would be remiss of me, in deference to our dearly departed in the legal fraternity, not to indicate that there were deaths in the Judiciary. Allow me therefore before everything else, to report that the legal fraternity lost the following to untimely deaths: Sadly, Honourable retired President of the Court of Appeal, Mr. Justice Jan Hendrik Steyn died at his home in Constantia, Cape Town on 30th December, 2013. Fortunately, Our Madam Justice Hlajoane attended his funeral in Cape Town. A memorial service befitting of that extra-ordinary public servant and Judge will be held soon.

Earlier, in April, 2013 Honourable Justice Baptista Kopang Molai, a distinguished Judge of the High Court passed-on. The other now departed member of the bench is Lydia Nts'ebo Challa, a Judicial Commissioner extra-ordinaire who served this country with distinction passed-on in November, 2013. Also departed is Mr. Thamae Lenka, who passed-on on 25th December, 2013, but was based in the Republic of South Africa. The other one who joined His Majesty, in heaven, are Mr. Kelumetse Temeki and Mr. Thabo Pheko who passed-on, on 12th August, 2013 and September, 2013, respectively. Both the latter two were up-and-coming members of the legal fraternity who were on their meteoric rise in their respective institutions. An official funeral fully covered by the state financially, was held in respect of my late brother, Judge B.K. Molai, while memorial services were held in respect of some of the deceased, with fitting tributes from this Court.

Ladies and Gentlemen, distinguished guests, the Right Honourable Prime Minister, under this segment of “obituaries” in my report, kindly allow me to briefly eulogize Nelson Rolihlahla Mandela, the greatest son of Africa.

Mandela was both an outstanding magnanimous lawyer, international icon and human rights activist. The Government of Lesotho and the Judiciary are at the forefront of promoting and protecting human rights. It is therefore befitting that we take this opportunity to celebrate the life of this great leader and son of Africa. Mandela’s ideals, values and legacy transcended international boundaries and human imagination.

Indeed, great leaders such as Martin Luther King, Abraham Lincoln, Che Guevara, Mahatma, Ghandi and Nelson Mandela and others are a rare breed. Theirs were indeed seminal lives. Let us all thank God, The Almighty, for having given us such visionary leaders.

May I at this juncture, request that we all rise to observe a moment’s silence.

[2] RETIREMENTS

Ladies and gentlemen, distinguished guests and all dignitaries here present, allow me to quote: I quote:

“If you are going to achieve excellence in big things, you develop the habit in little matters. Excellence is not an exception, it is a prevailing attitude”, end of quote.

These words uttered by the retired African-American Chairman of the Joint Chiefs of Staff, General Colin Powell, fully encapsulate, in vivid performance, what was achieved by three (3) of our Judges, who retired in 2013.

The past judicial year, 2013, ushered in the retirement of Honourable Chief Justice Mohapeloa Lebohang Lehohla, Honourable Judge Kelello Mafoso-Guni and Honourable Judge Gabriel Nt'sabeng Mofolo. They were the epitome of what a Judicial Officer ought to be, both in performance, integrity, industry, ethics, scholarly output and immeasurable contribution to our jurisprudence. We can only but pass our joint vote of thanks for having worked and been associated with such outstanding legal minds.

The huge void they left in our combined conscience in the Judiciary will indeed be very difficult to fill. Suffice only to indicate that, we held a year-end party in December, 2013 combined with a not-so-befitting send-off for them owing to financial constraints, to bid farewell to them.

We can only hope the present and future lawyers take a leaf out these remarkable achievers. We are indeed grateful to them and wish them all the success in their future endeavours. We will never hesitate to seek their

guidance and wisdom in the discharge of our constitutional judicial mandate.

[3] COMMERCIAL DIVISION OF THE HIGH COURT

Today marks exactly a year to date since the Right Honourable Prime Minister, Dr. Thomas Motsoahae Thabane, unveiled the ceremonial plaque to mark the inauguration of the Commercial Division of the High Court at the Old High Court Premises. Incidentally, just in passing, the complex in which we are holding this ceremonial opening of the first term of the first session, is in the eleventh year of its existence and inauguration.

The Commercial Division was perceived and still is a Court of excellence with a high case disposal rate within a short period of time. To this end, we extend our heartfelt gratitude to the Government of Lesotho, the Millennium Challenge Account and other development partners who made this innovative concept to come to fruition. It engenders investors confidence, builds confidence in our Judiciary and ultimately, by resolving commercial disputes expeditiously, attracts investors, thereby creating employment opportunities for Basotho. We are in the process of replicating these at the High Court. Indeed, we are in contact with the relevant authorities to introduce new interventions at the Judiciary to address the ever-burgeoning case backlog and increase our case disposal rate. The now functioning Land Court is but one of them.

[4] STATISTICS

Allow me, ladies and gentlemen, without going into the details, because these are still at an embryonic stage, to indicate that we will be introducing a new system that will adequately capture our caseload statistical information.

As part of the legal reforms, the Government of Lesotho and the Millennium Challenge Corporation implemented a project that saw the establishment of the Commercial Court, as indicated above, the Small Claims Court and Court-Annexed Mediation. There is no doubt that sustainability of such an important national initiative will depend entirely on a solid monitoring and evaluation system that will be supported by statistical information.

The current challenge facing the judicial system is that data on all cases of the Appeal Court, High Court, (which at any given time has to deal with commercial cases, land disputes, including ordinary cases), Magistrate Courts as well as Local Courts are fragmented and not well coordinated and documented.

As a consequence to this challenge, we are not in a position to provide accurate statistics on the number of cases concluded, on-going cases and so on, at any time except for the following statistics: For the year 2013, a total of 2325 cases were opened in the High court. In Criminal registry 822 new files were opened and it was 1506 in the Civil Registry. A total of 876 cases was completed which translates to 59 Criminal Cases/Trials and 460 Bail Applications. In the Civil Registry, 357 cases were completed amongst

all Judges which were both civil trials and applications. This is more so when an effort in the beginning has not been given towards that.

We therefore intend to address problems emanating from the current manual records to a computerized system such that information regarding each and every case with all relevant variables will be captured. We also believe that in order to have a detailed trend analysis, our reference period will be from the year 2002 if not before.

There will therefore be a need for a capital project whose objective will be to collect all the administrative records generated in all the judicial institutions throughout the country and convert them into manageable data which will pave the way for a monitoring and evaluation system.

The project will entail installation of appropriate physical infrastructure, deployment of personnel as well as capacity building. It will be with the assistance of the Statistics Department of Lesotho Government.

[5] MAINTENANCE OF PUBLIC ASSETS

Owing to budgetary constraints, nationally, this eleven-year old building is leaking at an alarming rate to the extent that we are fearful that a major catastrophe might befall this national institution. The Palace of Justice Complex, the Maseru Magistrates' Courts and Magistrates Courts in the districts as well as the Central and Local Courts, in the far-flung areas of

the country, need extensive renovations and altogether additional new buildings so we may better discharge our constitutional mandate. Even the Judges Chambers are falling into a bad state of disrepair, owing to a serious shortage of funds, nationally.

During the passed fiscal years, we have completely failed to maintain our public assets due to the fact that the amount allocated was too meager with the result that *inter alia*;

- a) Most doors and windows, even at the Palace of Justice and Maseru Magistrate Court complexes, are lying ajar;
- b) We have also been forced to discontinue maintenance of lifts at the two complexes with the result that some our courtrooms are inaccessible to people with physical disabilities;
- c) We have failed to maintain gutters and this results in rain water flooding heavily into our buildings due to blocked drains. This causes major damage to our buildings;
- d) Many courtrooms and residential houses in the far-flung areas of our country, such as Lesobeng Local Court have been rendered to non-usage because they are uninhabitable and have been blown away by the wind. In the result, we have been forced to move court operations to other far-away courts.

However, we are mindful of and remain committed and assure the nation, government and all stakeholders, that well-maintained and plush buildings *per se*, do not deliver speedy justice. We need to inculcate a culture of industry, work ethic, commitment, dedication and incorruptibility in our judicial personnel. We will not for one minute loose sight of these core responsibilities that we must promote and protect for the benefit of this nation. If not more hard word what is it?

Thankfully, we have in place a government that is prepared to listen and help in whatever way is practicable to help us discharge our mandate. Hence we are in discussions with the Ministry of Works (Building Design Services) to undertake some major repairs to these structures, in collaboration with the Ministry of Finance.

[6] REVENUE

Whilst we in the Judiciary acknowledge that we are a service delivery not a revenue collecting agency, we appreciate that some judicial services attract revenue and that control measures be put in place to ensure such public funds are not embezzled. There has been a slight increase in revenue collected as a result of increased police operations. For instance, for 2013/14 we had targeted that we will collect revenue amounting to M1,854,733 in the Magistrate's Court. This amount has already been exceeded by M259,121.25 and by the end of the fiscal year we will, most probably, have exceeded the target by M2,372,975.00.

However, mindful of our core mandate to make justice accessible to the poor, we do not envisage increasing court fees.

[7] COMMUNITY SERVICE SENTENCES

Criminal cases go hand and glove with sentencing, hence the need to address community service sentence at this stage. We had targeted that a number of 115 convicted persons will serve community sentence but we only had 98 Community Service Workers because most of the people opted to pay a fine.

[8] SMALL CLAIMS PROCEDURE

Small Claims Procedure which was introduced through the Civil Legal Reform Project that was supported by MCA-Lesotho has greatly reduced the number of civil cases entering the formal legal process. We had targeted that 600 cases would be filed but that number increased by 117 to make a total of 717.557 cases were disposed off through Small Claims Procedure resulting in a positive disposal rate of 78%.

[9] RESTORATIVE JUSTICE

We now come to cases that have been disposed off through the informal justice process of Diversion and Restorative Justice of the office of victims of Crime and Restorative Justice at the Maseru Magistrate Court. We had targeted that 270 cases would be diverted from the formal justice process but 345 cases have been diverted and the process has been completed in 333 of those cases and out-of-court settlements have been completed.

Mediation is proceeding in the remaining 12 cases with a possibility of out-of-court settlement. This means that a total 345 cases could have increased either the criminal cases registered or the civil cases filed in 2013/14. This mediation process of the Restorative Justice process that is court-connected plays a very important role in decongesting the courts.

[10] MASTER OF THE HIGH COURT

The office of the Master of the High Court is mandated to administer estates, (deceased and insolvent) and the Guardian's fund on behalf of minor children and persons who are mentally ill. Over and above the normal duties of administration of the fund, estates and registration of wills, the office has been successful in the following areas; awareness raising campaigns on inheritance rights held through public gatherings in the Ratau and Lilala Community Councils. Others were held in the Republic of South Africa for Basotho Mineworkers in areas such as Welkom, Mpumalanga, Rustenburg, Klerksdorp and Johannesburg. Locally, 14 Radio Programs were held and one TV Program on the same subject.

An office is due to be opened in Katse to make services accessible to the areas far from Hlotse and Thaba-Tseka where the Master's offices are. Such areas include Ha Theko, Mapeleng, Ha Nkokana, Kobong, part of Matsoku and Bokong in general.

[11] ENVISAGED JUDICIAL EDUCATION INSTITUTE

Ladies and Gentlemen, distinguished guests, the Right Honourable Prime Minister, and members of His Majesty's Cabinet, I earlier pointed-out the need to maintain and promote certain core values in the Judiciary, to which we are mindful.

Allow me, therefore to indicate that after a two-week tour of the United States, towards the end of 2013, we have set-up a task team of experts to map-out how best to devise a training plan and syllabus for a Judicial Training Institute. This task team will include all major stakeholders in the delivery of justice and in maintaining the high standards that are expected of judicial officers and legal practitioners.

The syllabus for the institute will include new developments in the legal field, ethics and code of conduct, induction courses for Judicial Officers, including new Judges, and prosecutors. It will include training in high-tech new court equipment, new medical and scientific evidence, computer training, judgment writing, drafting, case management and so forth.

Without casting aspersions on the quality of our new legal practitioners and Judicial Officers as well as prosecutors and, in keeping with the ever-changing new developments in the law and the huge difference between run-of-the-mill law school curriculum and what happens in practice, we need this pupilage in our country, in the form of a Judicial Training Institute.

Of course, we shall engage and consult with the Ministries of Justice and Law in this regard as well as the faculties of Law and Education, at the National University of Lesotho.

Let me assure you that we have not lost sight of the fact that a Judicial Training Institute does not start with the buildings dedicated to such an institute *per se*, but it can start with actual training within the limited structural space we have. After all, a fully operational site with buildings would be a huge challenge to sustain, never mind to erect, for such a small country as ours with a limited budget. However, as the saying goes: “a journey of a thousand miles begins with a small step”.

[12] PROPOSED NEW JUDICIAL STRUCTURE

Ladies and gentlemen, distinguished guests and dignitaries here present, three or four years ago, the Chief Justice established eight committees to advise him accordingly in the discharge of our constitutional mandate. Critical among these, all of which were chaired by a Judge, are the Strategic Planning and Restructuring Committees, which were later combined because of the overlapping nature of their tasks and responsibilities.

These two latter committees are operating from the perspective of the Administration of the Judicial Act, 2011 which envisages the promotion of an autonomous judiciary, independent of any outside interference but as

enjoined by the Constitution, Government is still enjoined to support the judiciary both materially and financially in the discharge of its mandate.

While admittedly, we are behind schedule in presenting our proposed new judicial structure accompanied by the Strategic Plan, owing to some challenges, to Cabinet and other relevant authorities, we are on the verge of finalizing a structure that is inclusive, representative, will not cut any existing jobs, a structure that is accountable, transparent, with a clear chain of command and a Strategic Plan that is visionary, practicable and sustainable.

Critically, we do not want to revisit the unfortunate situation where leadership of the Judiciary is unclear and therefore contested to the chagrin of all and sundry and to the stagnation of our judiciary. As we are advised, the Constitution has to be revisited and clarify as to who is the leadership of the Judiciary. That may not be a cure-all.

In this regard, we will enlist the full undivided support of the Executive and the Legislature. Gone should be the days when we “wash our dirty linen in public” to the detriment of this nation. Therefore, towards the implementation of this new proposed structure, we need legislative interventions to help us chart a better illuminated way forward.

The Judiciary needs to be user-friendly and answerable as well as accountable like all other arms of Government. Surely, we cannot

legitimately expect Government to help us financially and otherwise without a *quid-pro-quo* gesture of delivery and accountability from us. This is precisely what the new proposed structure envisages. We will of course, approach Cabinet with our heads held high with the sound knowledge that we have done what is expected of us.

[13] CHILDREN'S COURT

As a sequel to the enquiry chaired by Honourable Madam Justice Majara into the Old Protection of Children's Act, Parliament passed the Children's Protection and Welfare Act, 2011.

This Act represents the domestication of the Convention on the Rights of the Child (CRC) and it is intended to institutionalize the important United Nations Principles on Children's rights.

The Act recognizes that children come into contact with the law in different forms and therefore merit to be treated differently from adults. Children may come into contact with the law as, for instance, witnesses, those involved in family disputes and as offenders or preferably termed, those in conflict with the law.

For all these categories, the Act provides the necessary assistance by way, for instance, of advocating for use of child-friendly procedures when treating children in conflict with the law. It has provisions for intervention through court intermediaries that shall assist in obtaining information from children during court processes. It stipulates that corporal punishment is outlawed for children,

In pursuance of these provisions and safeguards towards children, therefore a Children's Court was established as a pilot project with a view to, funds and logistics permitting, establishing more such courts in the other districts.

Presently, the Maseru Children's Court is headed by one Resident Magistrate and one Second Class Magistrate, as well as a support staff that is housed in a prefabricated building on the old High Court premises. This Court handles mainly sexual offences, robbery, housebreaking, maintenance, custody and accessibility to children's cases.

However, one major handicap of this Court is that as rightly envisaged, it still does not have facilities that protect children from coming into contact with their alleged offenders and with a real life court environment. We sincerely hope that either government or development partners will play ball, so to speak, and finance this critical facility of the court to protect this vulnerable section of our populace, as envisaged by the new Act.

[14] JUDICIARY'S PARTICIPATION IN NURTURING THE PROFESSION

The High Court has had occasion in 2013 to participate in several events aimed at improving our profession. For a long time we at the Judiciary, have lamented the need to train our new graduates and the need to combine efforts in enhancing a synergy between the Judiciary, the legal fraternity and the National University of Lesotho (NUL). Not only that, but we also share the same sentiments with the Law Society regarding stagnation that seems to bedevil our profession both professionally and academically. The Faculty of Law at NUL has answered this clarion call by inventing two very important occasions, namely, NUL Legal Aid clinic and Khotla conference.

The Legal Aid Clinic has been established by the Faculty of Law in collaboration with the Pretoria based Human Rights Development for two main purposes. First, to provide access by people in particular, from poor and disadvantages groups to fair, effective and accountable mechanisms for the protection of their rights by providing free legal services to them.

The second objective of the Legal Aid Clinic is to provide students of Law with an opportunity to learn by doing real cases. Students take up cases for the vulnerable under the supervision of established practitioners.

The clinic was launched on the 07th September, 2013 in a manner that demonstrated the second objective in particular. I am enjoined, ladies and

gentlemen, distinguished guests, to announce the names of the lawyers who participated in this noble yet humble initiative by the NUL, so that other practitioners can be inspired to dedicating a little of their most valuable time to the service of this nation: They are Advocate M. Teele (King's Counsel), Advocate Matooane KC, Advocate S. Malebanye KC, Advocate T. Mpaka, Advocate L. Molati, Advocate Q. Letsika, among others.

I am reliably informed that the legal firm, Webber Newdigate covered the costs of the entire event. A huge vote of thanks to all of you, who made this noble exercise come to fruition.

[15] MILLENIUM CHALLENGE ACCOUNT – US

Ladies and gentlemen, distinguished guests, the year 2013 marked the end of the Millennium Challenge Account – Compact between the United States and the Kingdom of Lesotho. A new post implementation entity has been registered in its place. The Judiciary was one of the key beneficiaries of the compact, under the Civil Legal Reform Project, namely;

- a) Court – Annexed Mediation (CAM)
- b) Small Claims Procedure
- c) Automated Case Management and
- d) Commercial Court

Thankfully, at its closure the compact, had succeeded in seeing these four components come to fruition.

Firstly, the CAM program which is geared towards engaging parties to all civil cases before, classical litigation, if the necessity for such arises, to come before a trained mediator. This process is done through Rules of Court by both Assistant Registrars and Judges' Clerks. I am delighted to report that after several Roundtable Discussions between all court-users and intensive training of this court professional staff in advanced mediation, the CAM program has contributed immensely to the reduction of the case backlog in the High Court. The result is that some cases after mediation, are disposed off without referring them to classical litigation before Judges. The advantages of mediation are manifold to mention here. Uppermost is speedy resolution of disputes.

Secondly, the small claims procedure, with the monetary ceiling of M10,000.00, launched at the subordinate courts, have also proved to be a huge success. Thereby obviating the need to refer cases with small monetary value before Magistrates, who are, like Judges, inundated with a huge case workload. We cannot, for obvious reasons, underestimate the expeditious nature of small claims procedure, thereby benefitting the Judiciary.

Thirdly, the MCA – Lesotho has contracted with Synergy International System for the implementation of a Case Tracking and Management

System. The system will be implemented at the three Courts, namely High Court, Commercial Court and the Magistrate Court – Maseru.

As the name suggests, this system will help reduce backlog in that it will do away with manual lodging and tracking of cases. Thereby increasing case disposal, tracking, filling, and hopefully, ultimately, reporting.

Fourthly, the Commercial Court, a Division of the High Court, as earlier reported, was inaugurated in February 2013, at the premises of the Old High Court.

This Court of excellence is designed to promote faster, fairer and less expensive resolution of commercial disputes, whether large or small. It also aims to cut in half the time and cost required to resolve an average commercial dispute. The goals of this Court are to encourage the promotion of an improved investment environment for businesses of all sizes, and providing both companies and ordinary citizens better access to courts for economic disputes.

[16] STRENGTHENING THE LESOTHO JUSTICE SECTOR PROJECT – EUROPEAN DEVELOPMENT FUND

In March 2010, the Government of Lesotho (represented by the Minister of Finance) and the European Commission under the auspices of the European Union (EU), entered into the financing Agreement in terms of

which the EU undertook to fund the Lesotho Justice Sector with four Million Euro (4,000,000.00) to implement Strengthening the Lesotho Justice Sector Project (hereinafter called the project). The funding is part of the 10th European Development Fund (EDF) and it is principally intended to promote the Rule of Law in Lesotho. Specifically, the project is meant to enhance a professional, accessible and impartial Lesotho Justice Sector which will ensure a fair, timely, and efficient delivery of justice and ensure effective combating of corruption. The project is also seen as a vehicle towards the achievement of national goals regarding good governance and the Rule of Law as enunciated in the National Vision 2020, the National Strategic Development Program (NSDP), 2012 – 2017 and the Justice Sector National Vision and Strategic Plan adopted in 2004.

Following some unavoidable delays, implementation of the project commenced in February, 2013 and it is intended to close down in December this year. The Judiciary is among the institutions that are benefiting from the project.

The Technical Co-operation Unit, housed here at the Palace of Justice, has been set up to drive the implementation of the project under the supervision and co-ordination of the Chambers of the Chief Justice. A Project Steering Committee representing the major project beneficiaries and stakeholders has also been set-up to oversee the efficient implementation of the project. At the institutional level, and as a strategy to involve and integrate the beneficiaries in the implementation efforts and

thereby ensuring capacity-building, skills transfer and sustainability of the Project outputs in the long-term, five focal committees with representation from all beneficiary institutions have been set up. The Focal Committees are each focusing on specific focal areas of importance to the Project and they monitor efficient implementation of the project activities at an institutional level and also evaluate the impact of the project interventions.

[17] CASE MANAGEMENT SYSTEM

Following the gracious support that the Judiciary received from the Millennium Challenge Account-Lesotho to develop and set up the Case Management System (CMS), the project stepped in to fund the public launch of the system and sensitization of stakeholders about the system. Since the CMS is a new invention to the Judiciary, training and capacity-building of the system's core management team on operating and maintaining it, is of utmost importance. The project has and is continuing to fund extensive training of the CMS core management team, as well as the application team.

Further, ladies and gentlemen, upon the introduction of the CMS, it turned out that the High Court Rules as well as the Subordinate Court Rules are inconsistent with and at times, do not cover automated procedures. This called for an overhaul of the two sets of court rules.

The Rules Review Committee with representation from core stakeholders was set up to lead the exercise of reviewing the rules. The exercise

commenced under the support of MCA-Lesotho but by its close-down in September, 2013, the review process was nowhere near completion. The Project funding therefore, came in handy and supported the continuation of the review process.

[18] APPLICATIONS CORE TEAM (ACT)

As earlier reported, the MCA- Lesotho has contracted with Synergy International Systems for the implementation of the Case Management and Tracking System. To oversee the implementation of the system at the three pilot courts, namely, The High Court, the Commercial Court and the Magistrate Court – Maseru, the Judiciary has implemented a Project Management Team (PMT) with responsibility for undertaking the necessary daily monitoring of the project implementation.

The PMT is formed by representatives of the stakeholders from the said courts, the Project Consultant and the Supplier (Synergy International Systems). The PMT has now established an Applications Core Team (ACT) to support the implementation of the CMTS.

The ACT responsibilities and services will include, but will not be limited to the following:

1. Attending to the Training of Trainers and Administrator Training provided by Synergy so that they are all equipped to perform additional trainings in all components of the CMS.

2. Serving as a first level of user support, providing an initial point of contact and rapid response for all basic user support inquiries.
3. Collecting feedback to the PMT on user satisfaction and modification requests. These shall be collected and processed in batches at an interval to be scheduled by PMT.
4. Performing a series of refresher trainings on a regular basis, to be agreed upon by the PMT.
5. Developing, implementing and continually improving a set of standard operating procedures for the CMTS.
6. Monitoring workflow process and identifying any gaps or weaknesses in the data collection process. If the ACT is unable to rectify any problems that are identified they will raise these with the PMT.
7. Working as date entry personnel to strengthen weakness in timely and accurate data collection.
8. Serving as advocates of the system, able to explain the benefits of the CMTS and inspire users.

9. Creating and distributing data reports as requested by the PMT and stakeholder community.
10. Providing a full range of Administrator Functions, including data management, user account control and the creation of modification of user groups.

Ladies and gentlemen, distinguished guests, the ACT consists of nine persons, two from the Magistrate's Court and seven from the High Court, who are expected to be familiar with the entire system – contrary to general users who would concentrate only on their specific modules.

The ACT shall operate for an initial period of one year, with a mid and post-term evaluation, which may result in modifications to the Training of Trainers (TOT).

Ladies and gentlemen, distinguished guests and the Right Honourable Prime Minister, lest I be accused of relying too much on acronyms in this part of my report and therefore leave you a bit dumbfounded, let me hasten to note that I was dealing here with the aspect of the report and court operations which are mostly technical. Incidentally, now-a-days, it is the in-thing, so we, the courts cannot be left behind as we are not impervious to modern changes. At any rate, this report shall be available at the designated offices in the Judiciary, so it may be dissected fully and be for public consumption and scrutiny.

[19] COMMERCIAL COURT ROUNDTABLE AND OPEN COURT DAY

The Commercial Court Division of the High Court, in 2013 held a highly successful, roundtable. The purpose of the roundtable is to interact with other countries' commercial courts, exchange experiences and network with a view to making these Courts more productive. It is also intended to get in-puts from not only Honourable Judges but also legal practitioners, Assistant Registrars, Judges' Clerks as well as all stakeholders and other court users in the administration of justice.

The open court day was held in November, 2013. It encourages greater participation of the legal fraternity in the affairs and running of the courts. It is intended to de-mystify the courts and make them more use-friendly. Gone should be the days when Courts were treated like Ivory towers, non-susceptible to the outside environment. Courts are funded by the public through government purse and therefore should be transparent and accountable to the public. They should be treated like all the other two arms of government, namely the Executive and the Legislature. Else we cannot, I repeat, legitimately expect government to fund us, if we cannot uphold accountability, public participation, and transparency. Of course, we should strike a careful balance between these principles and the doctrine of separation of powers. These three arms of government cannot exist as silos and independent of each other. They are mutually inclusive

in promoting public participation, governance and accountability as well as well autonomy.

Participants to this roundtable were therefore drawn from the Malawi Commercial Court, and South Africa's Commercial Crimes Court. We drew a lot of inspiration and experiences from them with their wealth of services to their respective nations. We indeed look forward to strengthening this co-operation and extending it to other countries, in future.

[20] CO-OPERATION BETWEEN LESOTHO AND THE COMMONWEALTH SECRETARIAT

At the forefront of this new Government policy is the fight to eradicate corruption and bring to book offenders. Therefore, the Judiciary and Government of Lesotho enlisted the services of, through the Commonwealth Secretariat, Honourable Mr. Justice John Akiki Kiiza, from Uganda, our sister country, to preside over high-profile corruption cases. He is ably helped in this noble effort by Honourable Justice Molefi Makara.

The remuneration for Honourable Akiiki was taken care of by the Commonwealth while Lesotho took care of his security, accommodation, transport and other incidental expenses.

However, we could not retain the services of Honourable Akiiki for long because he is a substantive Judge of the High Court of Uganda, on full employment there. We have however, been promised and are in the

process of negotiating a new contract of service for another Judge from beyond our shores to help in presiding over these corruption cases. Of course, our Basotho Judges will continue handling other corruption cases.

[21] MEMORANDUM OF UNDERSTANDING WITH THE REPUBLIC OF SOUTH AFRICA

Over the past year, under the Memorandum of Understanding between the Governments of South Africa and Lesotho, we have enjoyed the benefits of the MOU, by having the expertise of four (4) South African Judges. I am also delighted to announce that His Majesty, on the advice of the Judicial Service Commission, has appointed three (3) more prominent South African Judges to handle cases in Lesotho. Gazettement to this end has already been effected.

However, allow me, distinguished guest, ladies and gentlemen, not to delve too much into the merits of these cases, in deference to the *sub-judice* principle, which prohibits discussion of cases, that are pending before the courts. If I were to fall, foul of the law, surely, forgive the pun, "then heavens would fall". I would be "running with the hares but chasing with the hounds". Unforgiveable!!! Surely. I therefore, rest my case under this segment.

[22] APPOINTMENT OF ACTING JUDGE ALEXIS MOKHESI AND ACTING LABOUR COURT PRESIDENT THABISO MOHAPI

Towards the end of the last year, ladies and gentlemen, distinguished guests, and the Right Honourable Prime Minister, His Majesty, on the advise of the Judicial Service Commission, appointed Honourable Acting Judge Alexis Mokhesi and Mr. Thabiso Mohapi, to the High Court and Labour Court benches, respectively.

Both are accomplished young jurists who have a long road ahead of them. The former has been assigned more specifically to the Commercial Court. He holds a Master's Degree in Commercial Law from the University of Witwatersrand, Johannesburg, South Africa. We cannot for one moment doubt his ability to preside with distinction over commercial disputes. The latter is a LLB graduate of the National University of Lesotho with ample experience as a Public Prosecutor, Legal Officer and Corporate Secretary, Arbitrator at the Directorate on Dispute Prevention and Resolution, with years' experience and lately, legal officer at the Metolong Project. In like manner, we do not doubt his abilities. What better way to reward them than appointing them to the higher bench.

However, their sojourn, so to speak, in these positions, will be only for a short while, so they may get the feel and gain experience at this highest level of the bench. We hope that, in future, we will advise His Majesty to appoint deserving lawyers for a short sojourn at these positions for exactly the same purpose as these two young jurists. It is not without wisdom that

the saying goes, I quote: "New brooms sweep better". However, also this has to be blended with experience, as: "experience is the best teacher". We know that ultimately, we will have the very best candidates for these positions.

We particularly, like to state that, it is our intention for purposes of transparency, level-playing field and to cast the net as wide as possible, in future, to advertise these positions and involve all stakeholders such as the Law Society and others to be involved in advertising and appointing top-notch candidates to these senior positions. We sincerely hope that both these appointments will inspire other young professionals to excel even better as the world is full of opportunities going forward.

[23] CONFEREMENT OF HONOUR OF KING'S COUNSEL

In the last year, it again pleased His Majesty, on the advise of the Chief Justice, on His Majesty 50th Birthday celebrations, to confer the honour of King's Counsel (KC) on the Honourable Minister and Member of Parliament for Maseru Central constituency, Advocate Haae Phoofolo, and Advocates Zwelakhe Mda, Advocate Sakoane Peter Sakoane and Advocate Lindiwe Sephomolo. This is in recognition of their many years of distinguished service to the legal profession, the law generally and our jurisprudence. Again, here we hope to engage with the legal profession and the Law Society in future, in advising His Majesty, for the conferment of the honour of King's Counsel. In similar vein, the Chief Justice will recommend to His Majesty conferment of the honour of King's Counsel on two prominent

lawyers. In like manner, one can only hope this will inspire up-coming legal practitioners to scale new heights.

[24] BAR-BENCH, STRATEGIC PLANNING AND RESTRUCTURING AND OTHER COMMITTEES

As earlier reported, the former Chief Justice appointed no less than eight committees to advice him on policy and other issues regarding the discharge of the judicial mandate under the Constitution and other laws for improved service delivery. These committees are chaired by Judges and Assistant Registrars serve as Secretaries to each of these committees barring the Strategic Planning Committee which is chaired by the Registrar. Their membership is drawn from all the relevant stakeholders and courts users, who belong to the respective committees depending on their mandate and functions.

For instance, the Bar-Bench committee is chaired by Honourable Justice Semapo Peete. “Its membership is drawn from the legal profession, academic and all court support staff. Its mandate is to improve and nurture cordial relations between the Judiciary and the legal profession in Lesotho and also to inspire professionalism and improve on the standard of performance on all fronts. The committee has planned a strengthening of the Bar-Bench activities with a black-tie Gala Dinner in the new Judicial year to be graced by Judicial dignitaries and “old timers” in the profession from our neighbouring countries.

Furthermore, the Restructuring and Strategic Planning Committees have now been amalgamated, with a view to presenting a new judicial structure, as earlier reported to the relevant authorities and finally to Cabinet for approval and/or its amendments. It is chaired by Honourable ‘Maseshophe Hlajoane. Its membership as well is drawn from all the relevant stakeholders and cadres and levels in the Judiciary.

The other notable committee is the IT Committee, chaired by Honourable Justice Nthomeng Majara, charged with overseeing the technical, IT and technological innovations in the Judiciary.

[25] THE INAUGURAL COURT MESSENGERS’ AND DEPUTY SHERIFFS’ ANNUAL GENERAL CONFERENCE

Towards the end of 2013, we had occasion to witness the launch and inauguration of the annual general conference at the CTC grounds that saw the launch of the inaugural National Committee committee/board, of Court Messengers and deputy sheriffs.

This ceremony was opened by the Honourable Minister Mophato Monyake and closed by the Honourable Chief Justice. Its objective is to professionalize the service and execution of court processes and judgments and make them more accountable. The conference drew membership from across Lesotho and was sponsored by the Association of Lesotho Bankers, most notably, First National Bank, for which we are eternally grateful.

The contribution of the business community is pivotal in that its role in the promotion of an investor-friendly environment, creation of job opportunities and restoration of public confidence in the Judiciary is critical. We therefore, inculcated in this committee/board and its members the importance of serving and executing court processes and judgments, particularly in commercial disputes, timeously and in an interference-free manner for the benefit of this nation. It therefore cannot be over emphasized that these court officers are important for protecting the image of the Judiciary and laying a sound basis for our economy.

[26] LESOTHO LAW SOCIETY AND THE PROFESSION

I quote,

“The peace and order of our communities, the relationships we have with others, the freedoms we enjoy, our security of person and property, the democracy we cherish – these are the fruits of the Rule of Law. What makes the Rule of Law effective? Our common agreement that we should all abide by the Rule of Law. But that consensus is itself underpinned by a legal system which requires skilled lawyers to make it work fairly and effectively”. End of quote.

These words by the Honourable Sir Gerals Brennan should be the guideline of the legal profession in our country which at the moment finds itself in a serious crisis.

There is a complete breakdown of confidence and mistrust by the general public in the profession which is accused of incompetence, fraud, bribery and corruption, illegality, theft and failure to observe the ethical rules. It is a practitioner's paramount duty to look after the interest of his client to the best of his ability. He must act honestly in the way he handles his client's affairs and not only do his or her best in service of the client, but also exercise a standard of care that is acceptable to the profession.

He must perform his duties with diligence and under no circumstances descend to the dishonourable or unfair but most importantly he must also have a sound grasp of the legal principles and the practical knowledge to apply the law. Both of these requirements are unfortunately sorely lacking.

One of the main causes of the legal profession's crisis can be attributed to the organized profession's inability and/or failure to apply a set of ancient rules. The other is that it lacks the capacity to do so. There is an urgent need to revise the Attorney General's Act, the Legal Practitioners Act and a set of ancient rules dating back to 1983. There is also an urgent need to upgrade the capacity of the Law Society through adequate funding in order

to introduce an administrative system that will be also be able to cope with the supervision in modern times of the proper conduct of legal practices in Lesotho, to reign in the activities of a whole legion of “*pseudo* practitioners” who conduct their illegal trade with impunity and to the detriment of the public, and to introduce a compulsory Continuing Legal Education programme to keep practitioners constantly informed of the latest development and practice of the law.

[27] ILI-ACLE TRAINING OF THE JUDICIARY

The past judicial year, 2013, has seen the judiciary enjoy the benefits of training offered by the International Legal Institute – Africa Centre for Legal Excellence. This Nairobi based Institute which has offices in Lesotho has over the past few years extended training to the all categories of judicial staff and even engaged Judges and other stakeholders in roundtable discussions.

The Cadres that have benefitted from this training, which mostly covers weekly periods during vacation, and awarded certificates include court messengers and deputy sheriffs, to better improve their service, Assistant Registrars, Judges Clerks, Magistrates, Registry personnel and a whole range of cadres in the different levels of the judiciary. Legal practitioners have as well enjoyed training under the Africa Chapter of the Institute.

To this and we are eternally thankful to the Central Bank of Lesotho who hold funding for these courses and workshops and disburses them whenever training has been undertaken.

Weekly courses were undertaken in for instance inter alia advanced mediation, records management for Registrar's Clerks, preparing a strategic plan, case tracking and management as well as courses for deputy sheriffs to better serve and execute court processes and judgments.

[28] ACKNOWLEDGMENTS

Ladies and gentlemen, distinguished guests, the Right Honourable the Prime Minister, Members of His Majesty's Cabinet, and fellow members of the legal fraternity, humbly allow me in conclusion, to express our collective vote of thanks to the Central Bank of Lesotho, the ILI-ACLE and the now closed MCA compact for their generous technical support and training to the Judiciary.

Towards the end of last year both the Government of the United States (State Department) and the European Union sponsored a two-week study tour for an Assistant Registrar, a Senior Resident Magistrate, a Judge and the Acting Chief Justice to the United States. This tour proved most beneficial to the Judiciary and trained them on the need to set-up a judicial training institute in Lesotho, in contemplation of the Lesotho Judicial

Education Training Institute, Bill, 2013, which proved to be a huge promise for the future of the judiciary and hopefully, will include the legal profession, as a whole.

The sponsors mentioned above as well the Government of Lesotho, for sponsoring the attendance of the Commonwealth Magistrates and Judges Association in the Jersey Islands, United Kingdom in many respects are most heartily thanked for their generosity.

We thank the Parade Commander Captain Moshesha and his men, the Military Band Master Second Lieutenant Matlali and his band for serenading us, so to speak, with music this morning. We extend our heartfelt thanks to the Commissioner of Police and his people for providing security and directing traffic; the Commissioner of Correctional Services for providing all the necessary assistance for keeping all the grounds clean.

Mr. Nthane has contributed an ox for the celebrations at CTC. Mr. Matekane has contributed M8,000.00 to the CTC celebrations. Mr. Lebona has contributed M5,000.00, Benson's Meat Market has contributed several kilos boerewors.

We are most grateful to this gesture of goodwill being shown by well-intended people and organizations. Re re: "**Ruri rea Leboha, le ka moso**".

We wish to thank all the staff of the Judiciary and others who made this occasion a resounding success that it is.

Invited and distinguished guests you are welcome for a glass of sherry at Maseru Club Grounds.

Wishing you all the best on this day, the New Year's Day in the Judicial Calender.

I thank you all for your attention.

KHOTSO! PULA! NALA!

Court adjourns.