

REMARKS BY HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE SAKOANE PETER SAKOANE, AT THE CEREMONIAL OPENING OF THE HIGH COURT ON 1ST FEBRUARY, 2023.

HIS MAJESTY KING LETSIE THE III

HONOURABLE DEPUTY PRIME MINISTER AND MINISTER OF JUSTICE

HONOURABLE PRESIDENT OF THE SENATE

HONOURABLE SPEAKER OF THE NATIONAL ASSEMBLY

PRESIDENT OF THE COURT OF APPEAL

HONOURABLE JUDGES

THEIR EXCELLENCIES HEADS OF DIPLOMATIC MISSIONS

THE HONOURABLE ATTORNEY GENERAL

THE DIRECTOR OF PUBLIC PROSECUTIONS

THE REGISTRAR OF THE HIGH COURT AND COURT OF APPEAL

CHIEF MAGISTRATES AND ALL JUDICIAL OFFICERS

PRESIDENT OF THE LABOUR COURT

DEPUTIES AND ASSISTANT REGISTRARS

JUDGES CLERKS AND MEDIATORS

THE PRESIDENT OF THE LAW SOCIETY

KING'S COUNSEL

MEMBERS OF THE BAR AND SIDE BAR

DISTINGUISHED LADIES AND GENTLEMEN

GOOD MORNING

[1] I wish to take this opportunity, on behalf of the Judiciary, to welcome you to the official opening of the High Court. We are mindful of the fact you have spared your precious time in your busy schedule to attend this occasion. We are collectively hugely thankful to all of you.

[2] On this once-yearly momentous occasion to mark the commencement of our judicial calendar, I have decided in this maiden speech to derogate from the usual narration of statistics of cases that have been filed in the courts save for statistics from the Apex Court and Court Martial which are relatively small. The reason for this is that this ceremony has not been held for the past two (2) years and some of the information has become irrelevant. But a better reason is my belief that a proper report of the performance of courts should be compiled and submitted to the Executive and Parliament at the end of every financial year. So as to inform policy-making and allocation of adequate resources to the judiciary.

OBITUARIES

[3] In recognition of the departed souls, permit me to state that during the judicial year 2021 to date, we sadly lost the following members of the Judiciary and the legal profession:

DESIGNATION	NAMES	SURNAMES	DATE PASSED ON
1. Advocate	Abraham	Lenono	24 th February 2021
2. Advocate	Nkole	Falatsi	09 th May 2021
3. Advocate	Seriti Victor	Thaba	11 th June 2021
4. Advocate	Ranale David	Thoahlane	16 th June 2021
5. Attorney	Nthoto Bernice	Maseko	19 th June 2021
6. Attorney	Thakane	Chimombe	25 th July 2021
7. Justice	Thamsanqa	Nomncongo	6 th September 2021
8. Advocate	‘Malifuo	Mapetla	09 th August 2021
9. SRM	Phethise	Motanyane	13 th September 2021
10. Advocate	Nthethe Desmond	Monethi	16 th September 2021
11. Advocate	Rethabile Abel	Rampai	16 th September 2021
12. Advocate	Vuyani Peter	‘Mone	07 th December 2021
13. Advocate	‘Mafusi	Makheha	December 2021
14. Attorney	Mokone Elliot	Sello	12 th February 2021
15. Attorney	Taelo Clark	Poopa	13 th August 2022
16. Advocate	Paseka	Raselabe	02 nd March 2022
17. King’s Counsel	‘Molotsi Godfrey	Kolisang	25 th January 2022
18. Attorney	Tšabo	Matooane	27 th January 2023

[4] May the souls of these dearly departed women and men rest in peace and tranquillity and rise with glory on the coming of our Maker.

May we all rise to observe a minute’s silence in their honour.

I thank you!

Expansion of the upper bench

[5] For a long time there were **eleven (11)** established positions of Judges of the High Court and only **ten (10)** of the **eleven (11)** filled. Today there are sixteen (16) established positions of Puisne Judges **fifteen (15)** of which are filled. However, this compliment does not match the exponential growth in the diversity of cases that are filed in the various divisions of the High Court including constitutional cases each requiring a panel of three (3) Judges. This says that more Judges are needed if this Court is to effectively deliver on its constitutional and statutory mandates.

New Recruitment Policy for Judges

[6] The filling of positions in mid-2021 was facilitated by the adoption of a transparent recruitment policy by the Judicial Service Commission. In terms of this policy, vacancies are declared and advertised to the Nation for interested lawyers to apply. They are shortlisted if they pass the integrity and probity tests. The short-listed candidates are interviewed openly. The majority of Judges have been appointed following this process. The participation of statutory agencies and members of the public in this process is highly appreciated. It brings the JSC closer to picking the right appointees. The members of the public are therefore, encouraged to actively participate in this important process. Afterall, they are the consumers of justice

Decentralisation/Improvement Of Access To Justice

[7] With a determined effort of improving access to justice, the Judiciary has embarked on a journey of decentralising its services across the country. In this regard, the following has been done:

The High Court

(a) On the 16th of May, 2022 the High Court (Northern Division) was inaugurated. This Division serves the districts Leribe, Botha Bothe and Mokhotlong. Justice Nathane and Justice Mokhorro have been assigned the duty to run the Northern Division. Feasibility studies are underway for the creation of another Division that will serve the districts Mafeteng, Mohale's Hoek, Quthing and Qacha's Nek.

(b) Following the demise of two Judges of the Commercial Court, three Judges namely Justices Mokhesi, Justice Mathaba and Justice Kopo have been assigned to that court. This compliment of younger and energetic judges has seen a turnaround in the performance of that court after its being non-functional in the latter part of 2019.

Re-opening of Maseru Magistrate Court Extension – Ha Mohale

Two magistrates have been deployed at Ha Mohale as an extension of Maseru Magistrate Court. This court serves all the rural posts of the district of Maseru but more importantly, the mountainous parts thereof.

The Judicial Commissioner's Court

Since its inception , the Judicial Commissioners Court, has been operating from Maseru and reaching out to the districts by holding sessions. In our endeavour to have this Court to have a regional footprint a Judicial Commissioner for the northern region of the country has been appointed. Her court will operate from Tsifa-li-Mali court complex serving three districts namely Mokhotlong, Butha-Bothe and Leribe.

Children' s court

In a partnership with the European Union (EU) and the World Vision, the Judiciary is in the process of upgrading the Children's Courts to an internationally accepted child friendly standards. Four districts have been ear-marked for this project namely:

1. In Maseru a house situated at Maseru West has been allocated to the Children's Court and its almost complete.
2. In Berea a park home with furniture has been donated for this court.
3. In Leribe the court which is housed at Tsifa-li-Mali has been painted to make it friendly and play therapy equipment has been procured. The court is ready to be launched.
4. In Mohale's Hoek the project is to kick start this month.

Small Claims Court

The Small Claims Court has gained popularity as indicated by the increase in the number of cases received and registered. However, it is beset with a couple of challenges like:

- Theft of attached and removed property due to unavailability of storage facilities.
- difficulty in execution of warrant of arrests due to lack of transport.
- inadequate office space for keeping of court records and personnel.

COURT MARTIAL REPORT 2021/2

During the years 2021-2022, the Court Martial processed 13 cases. This low number of cases is testimony to the improving standards of discipline in the Army. It argues well for the security and stability of Lesotho.

[8] The Court of Appeal Performance for the Financial Year 2021/2022

(a) In 2021, the Court of Appeal held 3 sessions: being the 2 ordinary sessions in April 2022 and October 2022. The court also held a special session in September and October 2022. This special session was dedicated to dealing with appeals in electoral petitions and other disputes related to intra-party disputes.

In the April session, a total of twenty-nine (29) appeals were enrolled and twenty-eight (28) were completed. One (1) appeal was postponed to the October session.

In the October session a total of 37 appeals were enrolled for hearing and 36 were completed. One (1) appeal was postponed to the next session.

In the special sessions a total of ten (10) appeals related to election disputes were filed between September and the beginning of October 2022 and all the ten (10) appeals were completed before the national elections' day.

Strategy to tackle backlog

[9] Following the recruitment of more judges, we have resuscitated the criminal session rolls in terms with section 11 (2) of the **High Court Act, 1978**. From today, there will be three judges on the session roll to exclusively deal with criminal trials. The judges will be allocated cases on a rotational basis from session to session. This will provide space for dealing with murder and corruption cases on an expedited basis. We call upon the prosecution to do its duty of bringing all witnesses to court so that no case is postponed on account of unavailability of witnesses.

As regards the so-called high-profile cases, the difficulty in their speedy disposal is that some of them are assigned a special prosecutor who can only prosecute one case at a given time before a particular judge. This makes it difficult to set down a case for a longer period before one presiding judge. Hearing these cases on a rotational basis does not only delay their completion but is costly both to the crown and the accused. In the process, witnesses might even die there by compromising attainment of justice. All these would have been avoided if from the commencement of these cases, the provisions of the **Speedy Trial Act, 2002** were strictly observed.

Virtual hearing of cases

[10] Around March 2020, COVID 19 emerged as a threat to life and threw overboard as normal lives. As a containment measure, Government imposed restrictions. Courts were not exempted. This forced us to find new ways of administering justice. The President of the Court of Appeal promulgated Court of Appeal (Amendment) Rules, 2020 and the Chief Justice issued Practice Direction 2 of 2021. These legal instruments enable online filing and hearing of civil cases virtually. Criminal trials could not easily fit and had to be postponed until COVID levels went down.

[11] Performance Management System

Distinguished guests, ladies and gentlemen, litigation by its very nature is an emotive adversarial process. Unnecessary and avoidable delays in finalisation of cases and delivery of judgments make the justice system even more torturous to litigants. As a mitigation measure, innovative processes such as court annexed mediation have been introduced to ensure that only deserving cases are subjected to the rigours of the adversarial process. This initiative is working, but it has not resulted in significant reduction of cases allocated for trial.

[12] Cognisant of this challenge and driven by insatiable desire to provide excellent judicial services in line with our strategic goals, we are in the process of piloting performance management system for judicial officers. We have started with Judges. The 1st April 2023 is the target date to roll out the pilot to judicial officers in Subordinate Courts. At the time the idea was introduced, Judges immediately embraced it and expressed their willingness to account for their decisions whilst retaining their judicial independence. To this end, we have adopted a 90-day rule for delivery of written judgments and are equally clear on a minimum number of judgments each Judge must deliver per quarter. This way, we are assured of a minimum number of written judgments to expect from each Judge per quarter. We have commenced quarterly reporting sessions where each Judge account for his/her work. In particular, focus is on a number of judgments

delivered within and outside 90 days as well as a number of judgments reserved. We are presently focusing on quantitative targets and will be graduating to qualitative targets once the system has outgrown the teething problems. This will ensure that we do not compromise quality simply to meet our targets. We are already seeing the results and expect exponential increase in delivery of written judgments once the system is fully implemented. We hope this will help to answer litigants' outcry about delayed justice as well as cases that go on appeal without written reasons.

[13] I am not oblivious to the fact that this is something new to the judiciary, thus requiring patience and cultural change. However, it is for the good of our people and the country and must be done. Besides cultural change, financial support from Government is indispensable to ensure provision of excellent judicial services. Failure to adequately support judiciary is an affront to the Constitution. I can only hope that the dire financial situation which judiciary is presently experiencing will be seriously addressed sooner rather than later.

Development Partners

[14] The Judiciary has dependable development partners in the EU and UNDP. The partnership was formed under the project named *Emergency Support for Judicial Assistance in the Kingdom of Lesotho*, the sole purpose of which is to

offer financial support to trials of security personnel. The UNDP continues to pay the salary of Justice Hungwe who is doing a sterling job. Support is also for the following activities:

- Judges and Magistrates colloquium held in December last year.
- Development of a Strategic Plan and its launch
- Lesotho Judiciary website
- Office equipment
- PRO equipment
- Stationery and Law Reports of Lesotho Appeal Cases for the years 1955- 1969, 2015 – 2016, Laws of Lesotho three (3) sets from the year 1960 to date and a subscription to Government Printing.
- Needs Assessment for Automated Case Management System

[15] Judicial Reforms

The Judiciary submitted a draft constitutional amendment to National Reforms Authority. The draft included, *inter alia*, to expansion of the composition of the Judicial Service Commission (JSC), and the creation of the Supreme Court to replace the Court of Appeal. This is in line with recommendations of many international missions which have been dispatched to Lesotho to advise on the streamlining and improvements of our judicial architecture in step with other comparable jurisdictions. The *ad hoc* nature of the apex court is a colonial relic that must be jettisoned

In order to modernise court processes and procedures, the following draft Rules and Protocols have been completed, namely:

- High Court Rules Of Practice And Procedure

- Draft Civil Procedures Rules
- Draft Criminal Procedure Rules
- Draft Domestic Violence Rules
- Draft Rules in Matters Involving Persons with Disabilities
- Practice Directions
- Standard Operating Procedures.

[16] Vote of Thanks

I thank all natural and unnatural persons who in various ways lend a hand in our efforts to improve access to justice and its delivery especially legal practitioners who take their work serious, judges' clerks, mediators, deputy-sheriffs and the rest of the administrative staff. I cannot forget court orderlies the police officers and drivers.

Special thanks go to *Bishop Ramela* who has generously assisted the Government of Lesotho by refurbishing the Maja Local Court and has built a Local Court and Police Post at Mahobong in Leribe. What is left is for Government to buy furniture and officially open these facilities. The Bishop also heeded my call to

construct a shelter for members of the Lesotho Mounted Police Service who serve in this Court. He has bought quality furniture for their comfort.

Lastly, my vote of thanks to the Commander of the Lesotho Defence Force and his command team for the colourful display of the national flag by the Airwing. I also thank the Parade Commander Captain (Capt) *Patane Dokatha* and the band for the rhythmic sounds of the music. I should not forget to thank members of the public who found time to grace this opening ceremony. *Le ka moso!*

THE COURT ADJOURNS!!!