

SPEECH BY HIS LORDSHIP PETER S. SHIVUTE
CHIEF JUSTICE OF THE REPUBLIC OF NAMIBIA, ON THE OCCASION
OF THE OPENING OF THE 2023 LEGAL YEAR, SUPREME COURT,
WINDHOEK

8 FEBRUARY 2023

Salutations

1. It is with great honour and pleasure that I welcome you all to the Supreme Court once more on this auspicious occasion of the launch of the 2023 Legal Year. This important occasion forms part of the annals of the history of the Judiciary, marking the official commencement of the judicial calendar of 2023.

2. Above all, it is my honour and privilege to, once again, welcome His Excellency Dr. Hage G. Geingob, President of the Republic of Namibia, and senior members of his Executive to this important event. His Excellency's personal presence at this event since its inception bears an indubitable testimony of the Government's recognition of the Judiciary as a separate

but equal arm of the State. His Excellency's personal presence is also a clear attestation of the keen interest His Excellency has shown and continues to show in the workings of the Judiciary.

3. I also welcome most warmly the Speaker, the Chairperson of the National Council and members of the Legislature who have joined us today. Allow me to also register my profound gratitude to all the distinguished representatives of the various institutions present here today.

Director of Ceremonies,

4. In the aftermath of the Covid-19 pandemic, the ceremonial opening of the Legal Year was held virtually for the past two years. Even then, His Excellency the President, you made it a point to participate virtually. I am pleased that with the reduction in the risks associated with the virus we are once again able to hold the event face-to-face.

5. For us in the Judiciary, the official launch of the Legal Year is not a mere ceremony or a tale that is told and forgotten. Since the Judiciary is accountable to the Namibian people, the occasion affords me the opportunity to apprise the nation of the performance of the Judiciary during

the previous year: The successes we have chalked and challenges facing us generally, and also to set out our vision for the future.

6. Before I deal with the performance of each of the parts that comprise the Office of the Judiciary, it is important that I make some general observations that will provide context and a better understanding of the constraints facing the Judiciary.

7. A convenient starting point is the financial position of the Judiciary because it is the determinant of our success or failure. I note that a Legal Year straddles parts of two financial years. Therefore, the report I put forth takes into account this reality.

8. The performance of the Judiciary in the year 2022 must be seen against the backdrop of the overall depressed state of the nation's public finances. Doubtless, this had a negative impact on all public services.

9. For the 2022-2023 financial year, the Office of the Judiciary received a budgetary allocation of N\$369,480,000. After the Mid-term Budget

review, that amount was happily increased by N\$17.2m to N\$386,714,000, although the amount that we considered required and necessary to meet our actual needs was N\$ 397,853,627.

10. Be that as it may and undeterred, just as was the case in the 2021 Legal Year, in 2022, too, the Judiciary undertook with commitment and diligence its core mandate of delivering quality justice to our people. In that regard, I wish to make a few now familiar observations which have been a source of pride for the Office since it was established on 31 December 2015. The first is that for the last financial year, just as in the previous years, the Office recorded a high budget execution rate of 74% as we spent N\$ 288, 078, 822 of the total funds allocated. Another bright feather in our cap is that during the period under review we received an unqualified audit report from the Auditor-General.

11. As on 31 December 2022, there were 741 employees on the payroll of the Office, excluding judicial officers. Of that number 64% are female – another statistic of which we are proud.

12. The Judiciary's payroll verification for the financial years ending March 2021 and March 2022 was successfully completed. I am pleased to report that the ghost employee problem facing some sectors of public administration is a phenomenon alien to the Office of the Judiciary. So much for the good news.

13. Because the funds allocated to the Judiciary do not always match what is reasonably required, a new financial year always comes with unpaid invoices from the previous financial year. Little wonder then that as on 31 March 2022, the Office of the Judiciary had unpaid invoices totaling N\$1.8m in respect of essential recurrent expenditure such as witness fees. The use of witnesses is *sine qua non* in all criminal proceedings. Those invoices were therefore carried over to the 2022-2023 financial year which will end in March 2023.

14. Another setback was that no budgetary provision was made for the filling of critical vacant posts for judicial officers and staff members. This distressful situation is bound to affect our ability to offer improved services to the public when, as expected, the Legislature passes new legislation day in and day out to deal with all manner of social, economic and political issues and occurrences. The upshot is that every new legislation brings in

its trail additional responsibilities to the courts. It is therefore no exaggeration if I say that every piece of legislation passed by Parliament impacting the judiciary increases the workload of the courts without matching financial resources.

15. In that regard, I wish to make special mention of the well-meaning calls for the introduction of various specialist courts, which, if implemented, will undoubtedly result in a gargantuan workload of the Judiciary and an exponential increase in the responsibilities of the Judiciary. In the recent past, I have received pleas for the establishment of designated courts for wildlife crimes, crimes involving corruption, fraud and money-laundering, and a family court. This list is not exhaustive. There may be a good argument for the creation of such specialist courts. However, it is seldom recognised that such initiatives require massive financial resources which must be met from existing funds as no additional funds are allocated for the execution of the specialised mandates.

Confidence in the Judiciary

Director of Ceremonies,

16. Late last year the Judiciary was compelled – out of character – to publicly reply to insinuations of judicial corruption in a survey on public

perceptions about the Judiciary – focusing on the High Court and the Supreme Court. I hasten to point out that critical debate about the function of the courts is to be welcomed. That is even more important if there is evidence of corruption. What we took exception to is the insinuation made of corruption without any evidence at all. I have the duty to place on record and to caution that imputations of corruption without any evidence can cause irreparable reputational damage to the Judiciary and can result in loss of confidence in the one institution whose effectiveness depends on integrity.

Succession planning

17. Director of Ceremonies, I wish to return to the theme of the male-female ratio in the Judiciary. In last year's report, I opined that greater effort was required to bring more women on the Supreme Court Bench.

18. The Judicial Service Commission has had deliberations on the matter and I am in the process of conducting consultations across the board to address the concern. I am confident that in my next year's report I will report progress on the matter. I wish to stress, however, that the situation at the

Supreme Court is part of a larger problem that confronts not only the Judiciary but the country as a whole and therefore requires our collective wisdom. The High Court is supposed to be the primary source of recruitment to the Supreme Court, but as we all know, finding willing and suitably qualified candidates for appointment to the High Court, has not been plain sailing.

19. To compound the problem, a good number of judges in both the High Court and the Supreme Court will be leaving the Judiciary over the next five-year horizon either through retirement or for personal reasons before retirement age. Given that reality, we are already finding it difficult at the moment to recruit judges to the High Court. Thus, there is a real concern about how the departing judges will be replaced. This is therefore a matter that is of national concern and will require the collective wisdom of all the organs of State.

20. Nevertheless, in our attempt to remedy the unsavoury situation, the Judicial Service Commission has taken a decision to afford opportunities for acting appointments at the High Court to as many eligible persons as possible. Such appointments are made under carefully crafted guidelines

that include a basic competency assessment and a fitness and suitability interview. Furthermore, I have recently set up several in-house committees to deliberate on challenges facing the Judiciary and to plan for the future. One such committee is dedicated to training. The training committee's mandate includes planning and running an aspirant judges programme for interested eligible candidates.

21. I cannot stress strongly enough that for us to successfully mount these initiatives and to make sure that the Judiciary is competently staffed well into the future, sufficient resources will be required. I am looking forward to constructive engagement with the Executive and the Legislative in addressing this issue for the good of our country.

22. I understand fully that the Fiscus is limited in its ability to avail adequate resources for the operations of Judiciary, but that does not remove the reality that without adequate resources the Judiciary can only sustain a minimum level of service delivery. Nor does it change the reality that the workload borne by the courts increases exponentially from year to year. The statistics that I release today lays that bare.

Director of Ceremonies,

23. After sketching a general overview of the environment we are operating under, I wish to now report on specific activities relating to the performance of the Judiciary.

24. I will only make general comments about the statistics as you will be able to see the details for yourself. It makes sense to commence the past year's performance with our human capital profile.

Judicial officers and staff members

25. The Office has a personnel compliment (which includes judges and magistrates) of 994 approved posts. There are five permanent Judges of Appeal at the Supreme Court. There are 30 Judges at the High Court. There are 104 Magistrates. Finally, there are 855 staff members providing support to judicial officers.

26. As on 13 December 2022, 253 posts were vacant as they were not funded. Fifty percent of the vacant posts are in the Directorate: Lower Courts. The number of vacant posts in the Directorate: Lower Courts is

worrisome because magistrates' courts and the High Court are primarily trial courts, that is first instance courts. They hear evidence of witnesses in both civil and criminal matters. That is an inherently labour intensive and time consuming activity. The fewer judicial officers and administrative support staff there are, fewer the cases they can deal with.

Capital projects implementation

27. In the year under review, the Office of the Judiciary in collaboration with the Ministry of Justice continued with the construction, renovation and rehabilitation of existing court houses and facilities across the country. The capital projects undertaken in 2022 included the construction of the Seeis Periodical Magistrates' Court in the Khomas Region and the Katima Mulilo Magistrates' Court in the Zambezi Region. The latter is near completion. Renovations have also been done to magistrates' courts at Okakarara, Walvis Bay and Gobabis.

28. Phase 1 of the upgrade of the High Court, Main Division, has been completed, while the renovation of the Office of the Judiciary Headquarters is progressing well and is envisaged to continue in this current year, subject to the availability of funds.

29. Although we have registered good progress in expanding and maintaining the Judiciary's capital infrastructure, the need for the construction of new courthouses and for the upgrading and renovation of the existing ones and other facilities remains.

Performance of the courts

Supreme Court

30. Turning now to the operations of the courts, the Supreme Court, unlike the High Court and the Lower Courts, is primarily a court of appeal and review. In other words, save in very exceptional circumstances, the Supreme Court does not hear evidence through witnesses.

31. The number of cases registered with the Supreme Court has increased from year to year. In 2022 a total of 114 appeals were registered with the Supreme Court. Of this number, 105 are civil appeals and nine are criminal appeals. During the year under review, 51 matters were enrolled between March and November. Out of the 51 matters enrolled, two were postponed and 49 were heard by the Court. Of the 49 matters heard, 47

judgments were delivered representing a 96% clearance rate and the remaining two are receiving attention.

32. In 2022, the Supreme Court Rules were amended to improve on the Court's operations. The amended rules came into effect on 15 November 2022. One notable feature of the amendments is the codification of the guidelines for the conduct of remote hearings in certain circumstances such as where a non-resident lawyer is, for any good reason, unable to appear in person at court. Another notable amendment is the provision made for the disposal of cases on written submissions only in exceptional circumstances such as during a State of Emergency.

High Court

33. Moving on to the High Court, the High Court has two Divisions: The Main Division in Windhoek and the Northern Local Division in Oshakati. The Court's work is divided into a civil stream and a criminal stream.

34. The general output of the court remains satisfactory. The civil stream judges in both Divisions attended to 10 014 civil actions. Of this total, 6 465 matters were finalised in both Divisions, representing a 65% clearance rate.

The civil stream judges delivered 522 judgments during the period under review, 69% of them in the Main Division within the approved guidelines for the disposal of civil cases, and 62% in the Northern Local Division.

35. A total of 1012 civil cases were referred to court-connected mediation in both divisions, resulting in 332 out-of-court settlements – representing a success rate of 47.8%, for the Main Division, and 58% for the Northern Local Division.

36. As far as motion proceedings are concerned, the civil stream heard a total of 1106 applications and finalised 695 cases. This represents 55% finalised cases within the approved guidelines.

37. For both Divisions, the judges in the criminal stream presided over a total of 140 criminal trials. Twenty cases were completed by the Main Division. That represents a finalisation rate of 28%. The Northern Local Division, on the other hand, had a finalisation rate of 17%. Fifty-seven cases remain on the court's part-heard roll as a carry-over to the 2023 Legal Year. A total of 63 cases on the criminal roll from both Divisions involved violence against women and children; 21 involved either fraud or theft and ten involved human trafficking.

38. During the period under review, the High Court attended to 2 917 criminal reviews from the Lower Courts and finalised 2 135 of them. That represents about 70% of the review cases. The judges of the criminal stream also heard 151 criminal appeals, and finalised 142. That represents a 98% clearance rate in respect of the Main Division and 86% in respect of the Northern Local Division.

39. During the 2022 Legal Year, the judges in the criminal stream delivered 40 judgments after completion of trials; 83 criminal appeal judgments and 190 criminal review judgments. Seventy-six percent of the judgments were delivered timeously within the approved guidelines at the Main Division and 65% at the Northern Local Division.

40. The year ended on a high note for the High Court when in particular it held its historic initiative: The Bench-Bar Workshop in November 2022. This workshop, held under the theme “*Reflecting on High Court Reforms*”, was the first of its kind where there was meaningful interaction between the Bench and the Bar outside the surrounds of the court. The workshop was open to all stakeholders, including legal practitioners, candidate legal

practitioners, deputy sheriffs and mediators. During the workshop, training was offered on the use of e-Justice and the conduct of court-connected mediation. An interactive training session was also held with deputy-sheriffs over two days on their duties as officers of court. As I understand it, this is going to be a yearly event, which is a welcomed development.

Lower Courts

41. Concluding with the Lower Courts, the performance of the Lower Courts in the year 2022 has, I am afraid, not improved appreciably. For us to see a reduction in the pending cases we need more magistrates, more court rooms, more support staff and sufficient funds to run periodical courts and to pay witness fees. We have, however, not given up. We cannot give up. We shall strive hard to bring about a discernible improvement in the operations of the Lower Courts.

42. Lower Courts consist of nine Regional Courts, 37 District Courts and 35 periodical courts across Namibia. These courts deal with a wide range of criminal, civil, maintenance and domestic violence cases and low level traffic offences. The Magistracy is also responsible for a multitude of agency services on behalf of other Ministries, such as attending to the

solemnization of marriages under the Marriage Act and the granting of temporary and permanent liquor licences.

43. The Magistracy dealt with 64 536 cases over the period under review. This shows an increase of 10.4% from the 2021 Legal Year. A total of 26 756 cases were finalized. This means that 9 065 more cases were finalised compared to the previous year. The result is that 37 983 cases were carried over to January 2023.

44. I cite these statistics to take you on a journey through numbers to indicate the tremendous pressure the courts operate under, especially at the magistrates' courts level.

Director of Ceremonies,

45. As you may have observed, I have decided this year to highlight the financial constraints negatively impacting the work of the Judiciary. I can assure the nation that there is an enormous desire among all members of the Judiciary and the support staff to do better to serve our people, if only we could have sufficient resources to fulfil our constitutional mandate.

46. Be that as it may, I am pleased to report that overall, the Judiciary remains unquestionably sound, healthy and ever ready to serve our people well. Therefore, my call to all members of the Judiciary and the support staff in this 2023 Legal Year is that we must rededicate ourselves to the noble cause of serving our people with renewed diligence and dedication, not forgetting honesty and integrity. The country expects nothing less.

I thank you.