

**ADDRESS BY THE HONOURABLE CHIEF JUSTICE PETER S.
SHIVUTE AT THE FEDERATION OF AFRICAN LAW STUDENTS
(FALAS) MOOT COURT COMPETITION, 6 OCTOBER 2023,
UNIVERSITY OF NAMIBIA, WINDHOEK**

The Honourable Minister of Justice, Yvonne Dausab, MP

Prof. Kenneth Matengu, Vice-Chancellor of the University of Namibia

Her Excellency Vivian Loss Sanmartin, Ambassador of Brazil to Namibia

Dr. Ndatega Asheela-Shikalepo, Associate Dean: School of Law

Professors of law and lecturers

Esteemed panelists and law students

Ladies and Gentlemen

1. It is my distinct honour to address you today at what promises to be an exciting event, as we witness budding legal minds challenge each other with intellectual rigour and legal discourse. I am thankful to the organisers for affording me the opportunity to speak at this inaugural moot court competition of the FALAS Namibian

Directorate, and I have high hopes that this is just the beginning of many more to come.

Dear Students

2. One of the advantages of studying law is that it opens up a vast array of career paths. You may enter the academic sphere as a law lecturer or join the corporate world as a legal advisor for a financial institution. Your law degree may thrust you into a career in politics or you may choose to join the Bench, serving as a magistrate or judge. In fact, one of my future successors may very well be in this auditorium.
3. The area of legal practice which I wish to discuss, however – and which is apt, considering our reason for being here this evening – is that of trial advocacy.
4. One cannot overemphasise the pivotal role that trial advocates play in our legal system. If the courtroom is a battlefield, trial advocates are the soldiers, words are the weapons and justice is the ultimate prize.
5. In the courtroom, they are the voice of their clients, advocating for their rights and interests. Trial advocates are often the bridge

between the law and the layperson, translating complex legal concepts and procedures into language that their clients can understand. Properly considered and researched submissions are of extreme importance to the judge that has the task of making an ultimate finding on the case.

6. Lawyers play a role in societal change when they tackle cases with broad implications, challenging systemic injustices and advancing societal progress through the legal system.
7. Trial advocates also contribute to the development of the law itself. Through legal arguments they help shape legal precedent and influence future decisions.
8. Trial advocacy is a truly exciting and fulfilling profession. However, it is also challenging and comes with great responsibility. To quote the late Justice Irving Kauffman, an American Appellate Judge:

“The function of the appellate judge is to search for error; the function of the trial judge is to search for truth. He must be assisted by able trial lawyers, lawyers who can confront the challenge provided by elusive facts and perhaps, elusive witnesses...the development of legal principles is tied ineluctably to the factual determinations which

come from the trial court. The trial lawyer is confronted, therefore with a great challenge and a great responsibility.”

9. Because of the burden of responsibility borne by trial advocates, it is imperative that their standards of performance must be exceptionally high.
10. To a great extent the success or failure of a client’s case is largely dependent on the trial advocate’s efforts. To traverse our case law is to find several instances where the courts have had to admonish legal practitioners for their failure to properly conduct their clients’ cases. A legal practitioner’s incompetence may result in drastic financial losses for their client, or even the deprivation of their client’s physical liberty.
11. Any skilled trial lawyer will tell you that preparation is key. Louis Nizer, an American trial lawyer and academic, said the following:
“Preparation is the be-all of good trial work. Everything else – felicity of expression, improvisational brilliance – is a satellite around the sun. Thorough preparation is that sun.”
12. Thorough case preparation demands that lawyers conduct comprehensive research, meticulously analyse information, and skillfully articulate legal arguments. *“Adequate preparation requires*

a lawyer to know his client's case, inside and out, and also his opponent's. It is sometimes said that certain cases are not important enough to warrant much preparation, but this is merely another way of saying that if a thing is not worth doing at all it is not worth doing well. If a case is worth trying it is worthy of thorough preparation.”¹

13. It is therefore essential to your litigation practice, that you familiarise yourself with the relevant case law and other legal authorities that support your client's case. Furthermore, it is imperative that you always remain abreast of jurisprudential developments.
14. Effective trial advocacy also requires a firm grasp of procedural law. Trial advocates need this knowledge to navigate the complexities of the legal process. A solid understanding of procedural law aids practitioners in strategic decision making, guiding them in how to approach various aspects of a trial.
15. Trial advocates must have a proper appreciation of the rules of court to ensure that their evidence meets admissibility standards and effectively persuades the Court. The knowledge of procedural law is

¹ Milton D. Green *Preparation for Trial* 1955 WASH. U. L. Q. 154 (1955)
Available at: https://openscholarship.wustl.edu/law_lawreview/vol1955/iss2/3 (Accessed on 29 September 2023)

not merely an asset for trial advocates, it forms the foundation of their practice.

16. Moot court competitions provide a training ground for future legal practitioners to nurture and hone their trial advocacy skills. By simulating real legal proceedings, moot court competitions serve as a means to apply the theoretical knowledge acquired in the classroom to real-world scenarios. I strongly encourage you as law students to take your participation in moot courts seriously, as it will undeniably be advantageous when you transition into the world of litigation.
17. As young legal professionals in the making, you are called to continue carrying the torch of this noble calling. To this end, I leave you with a few pointers to be mindful of even as you prepare for moot court, as these will prepare you for the real-world court experience.
18. Dress appropriately and observe proper court decorum. Preparation is paramount – know your case, your opponent’s case and the rules of the court in which you are litigating. Also know whether to institute application or action proceedings – ask yourself “*Is there a genuine dispute of facts?*”

19. Always take the court into your confidence. Disclose all relevant facts and legal authorities, even if they do not favour your position.
20. Choose your battles wisely – not every case needs to go to court. Consider alternative forms of dispute resolution in an effort to curb costs for your client.
21. And lastly, put in the work! Make your clients' hard-earned dollars count.
22. As FALAS represents an international association of law students, I hope to see this moot court competition event grow to include participation from Namibian law students competing against their counterparts from various African jurisdictions. This would be a significant step towards realizing FALAS' vision of establishing a platform where African law students can engage and collaborate, contributing to the formation of a strong continental legal community.
23. Lastly, to the participants: I urge you to approach each round with integrity, professionalism, and respect for your fellow competitors. I wish you all the best and may the best team win!

I thank you.