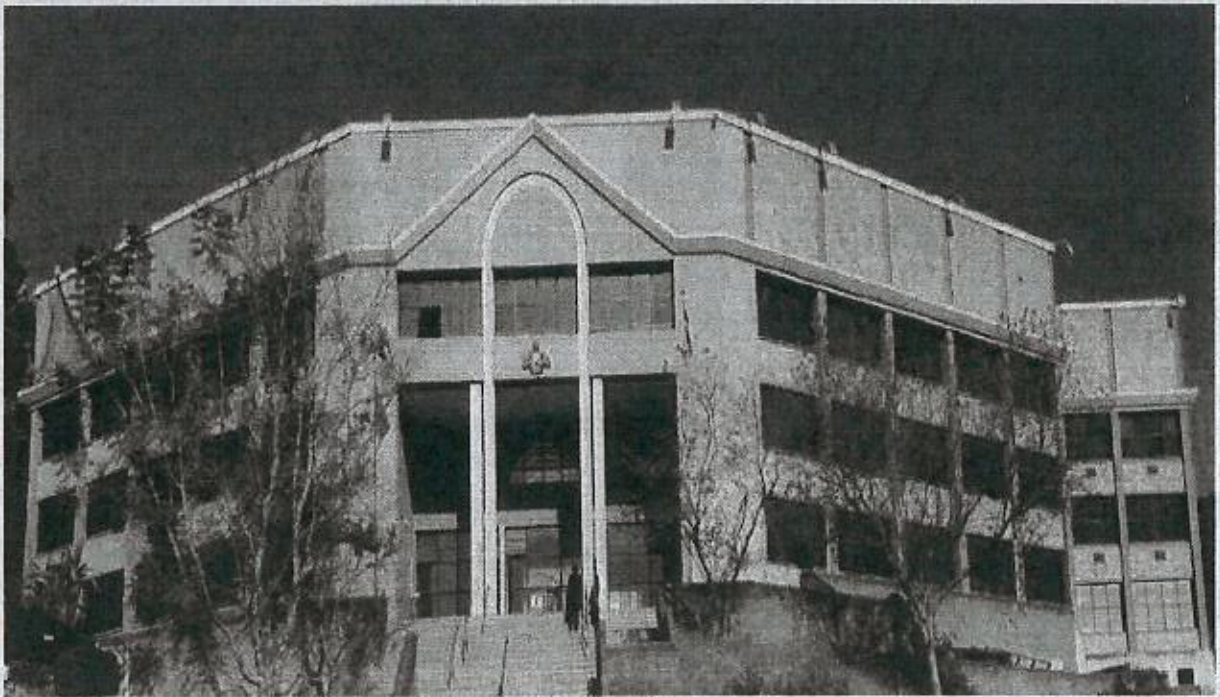




**OFFICIAL OPENING OF THE HIGH COURT
OF ESWATINI**



**ADDRESS BY THE HONOURABLE CHIEF
JUSTICE DURING THE OFFICIAL OPENING OF
THE LEGAL YEAR ON THE 28TH JANUARY, 2019**

Honourable Members of the Judicial Service Commission

Honourable Judges of the Supreme Court

Honourable Minister for Justice & Constitutional Affairs

Honourable Judges of the High Court

Honourable Judges of the Industrial Court

Your Excellences Members of the Diplomatic Corp

The Attorney General

Principal Secretary, Ministry of Justice

Invited Guests

The Director of Public Prosecutions

Registrar of the Supreme Court

Registrar of the High Court

Registrar of the Industrial Court

Your Worships the Magistrates
The Executive of the Law Society
Members of the Legal Fraternity
All Protocol Observed
Ladies and Gentlemen

I. This occasion marks the commencement of the Legal Year, 2019. I am greatly humbled and honoured to host you and further welcome you all to this event. Some of you have travelled far and wide to share this moment with us. You have sacrificed your precious time and agreed to grace this occasion. Your presence here is greatly appreciated.

- II. The importance of the Judiciary, as an arm of Government is beyond any doubt and cannot be overemphasized. The Constitution expressly provides that Justice shall be administered in the name of the Crown by the Judiciary which shall be independent and subject only to this Constitution.**
- III. The Constitution further provides that the Judicial Power of ESwatini vests in the Judiciary, and, that in the exercise of the Judicial Power, the Judiciary, in both its judicial and administrative functions, including financial administration, shall be**

independent and subject only to this Constitution, and, that it shall not be subject to the control or direction of any person or authority. When discharging our Constitutional mandate we should not be apologetic to armchair critics. In carrying out our mandate, we shall listen to the views of our stakeholders; however, such views are persuasive and not conclusive on our vision to execute our mandate.

IV. The vision of the Judiciary provides:

“The Judiciary of the Kingdom of ESwatini as an independent institution, shall uphold the rule of law, efficiently dispense justice to all those within its borders, in keeping with the Constitution.”

- V. The Mission Statement of the Judiciary expressly provides, inter alia, that the Judiciary of ESwatini is an independent arm of Government entrusted to administer justice subject only to the Constitution, it shall uphold the rule of law, ensure access to justice for all, jealously safeguard the independence of the Judiciary, as well as to enhance the**

administration of justice by employing and training competent and committed staff.

VI. We meet here today at a time in the history of our country when there is a rapid resurgence and upsurge of violent crimes against women and children inclusive of innocent and defenceless people. Our courts are inundated with large volumes of violent crimes including premeditated murder, robbery and aggravated rape. We call upon all agencies involved in the criminal justice system to work tirelessly to rid this country of the scourge of violent and serious crimes. The upsurge of

violent crimes will have a negative impact on economic stability.

VII. The statistics of new cases received in 2018 are as follows:

➤ Manzini Magistrate's Court, inclusive of Circuit Courts at Mliba, Matsapha, Mankayane, Malkerns and Bhunya: 12 652

➤ Mbabane Magistrate's Court: 5 946

➤ **Siteki Magistrate's Court inclusive of
Circuit Courts at Siphofaneni and Big
Bend: 857**

➤ **Simunye Magistrate's Court: 313**

➤ **Nhlangano Magistrate's Court
inclusive of Circuit Courts at Hluti,
Lavumisa and Hlatikulu: 1 424**

➤ **Pigg's Peak Magistrate's Court
inclusive of the Circuit Court at
Buhleni Magistrate's Court: 1 192**

➤ **High Court: 2 850**

➤ **Industrial Court: 402**

VIII. The statistics of cases finalised in 2018 are as follows:

➤ **High Court: 1 443**

➤ **Mbabane Magistrate's Court: 3 905**

➤ **Manzini Magistrate's Court inclusive of Circuit Courts at Mliba, Matsapha, Mankayane and Bhunya: 10 652**

➤ **Nhlangano Magistrate's Court inclusive of Circuit Courts at Lavumisa, Hluti and Hlatikulu: 1 686**

- **Siteki Magistrate's Court inclusive of Circuit Courts at Siphofaneni and Big Bend Magistrates Court: 585**

- **Pigg's Peak Magistrate's Court inclusive of the Circuit Court at Buhleni: 1 054**

- **Simunye Magistrate's Court: 292**

- **Industrial Court: 126**

IX. The statistics of pending cases as at 31st December, 2018 are as follows:

- **Mbabane Magistrate's Court: 2 039**

- **Manzini Magistrate's Court inclusive of Circuit Courts at Matsapha, Mliba, Bhunya and Mankayane: 4 687**

- **Siteki Magistrates Court inclusive of Circuit Courts at Siphofaneni and Big Bend: 198**

- **Nhlangano Magistrate's Court inclusive of Circuit Courts at Lavumisa, Hluti and Hlatikulu: 291**

➤ **Pigg's Peak Magistrate's Court
inclusive of the Circuit Court at
Buhleni: 2 068**

➤ **Simunye Magistrate's Court: 21**

➤ **Industrial Court: 1 146**

➤ **High Court: 1 802**

X. We have received a shocking report that most of our Correctional Facilities are overcrowded because of the high volumes of inmates awaiting trial. Overcrowding of Correctional

Facilities is unhealthy and costly to the department of Correctional Services; the inmates have to be fed and given medical treatment. Some of the inmates who were not granted bail have spent many years in custody awaiting trial. However, we have appointed a team of five Principal Magistrates to visit Correctional Facilities with a view to ensure that inmates awaiting trial who have not been granted bail do not stay longer than necessary.

XI. We are cognisant that direct foreign investment depends largely on the “index for ease of doing business” which is determined by

the speed at which a country finalises Court cases. If a country's justice system is slow in finalizing cases, this will impact negatively on the government's capacity to attract direct foreign investment. The speed to finalise cases is determined to a large extent by the availability of sufficient Judicial Officers as well as the availability of Courts.

XII. The statistics of new and pending cases indicate that the backlog of cases within the Judiciary is still very high. The underlying causes of the backlog of cases are the shortage of Courts as well as the shortage of personnel

in the form of Judges, Magistrates as well as the Support Staff. We have been pleading with the Government since 2015 to allocate sufficient posts for our Judicial Officers and Support Staff as well as to sanction the construction of additional courts; however, the previous government didn't support the Judiciary in its bid to carry out its mandate. Our efforts were consistently and systematically undermined because of our resolve to protect the independence of the Judiciary.

XIII. We have just concluded the National General Elections in October, 2018. This is a historic milestone and a great achievement to our country. Political stability is critical to direct foreign investment as well as economic stability.

XIV. Pursuant to the National General Elections, a new Government is now in place. As the Judiciary we welcome the new Parliament as well as the new Cabinet. The advent of the new government has given hope to Eswatini that urgent positive steps will be taken to stabilize our economy through exports, encouraging

direct foreign investment as well as reviving and giving financial support to the small and medium enterprise which is key to stimulating the economy. It is our ardent hope that the new Government will uphold and defend the Constitution, and, that they will not undermine the Constitution. Furthermore, we trust that the new Government will support the Judiciary in its efforts to execute its Constitutional mandate.

XV. Despite the challenges faced by the Judiciary, we are determined, as an arm of government, to execute our mandate as required by the

Constitution. The Constitution provides the Judiciary with a system of checks and balances which avail legal remedies to aggrieved litigants in the form of reviews and appeals; and, these remedies are the cornerstone of our Constitutional justice and the Rule of Law.

XVI. During the year 2018 we have made successful strides with a view to deliver on our mandate. We have successfully relocated the Industrial Court as well as the Industrial Court of Appeal from the High Court premises to the Madlenya Building in the centre of town. The relocation has created more court-rooms and office-space

to be utilized by the Judges of the High Court and Supreme Court as well as their Support Staff. The sharing of court-rooms and offices has been greatly reduced but not eliminated. The remaining challenge is to secure leased premises to house the Supreme Court, pending the construction of the Supreme Court. Such a move will ensure that the High Court building is utilized by the High Court Judges as well as its personnel; and, this will bring to an end the sharing of court-rooms and offices.

XVII. We have secured leased premises in Big Bend, and, we are currently renovating the premises

to be used as the Big Bend Magistrates Court. Three Magistrates, Prosecutors and Support Staff will be stationed in Big Bend. The Court will be fully functional by the end of February, 2019. Currently, the Court sits at the Swazi National Court building in Big Bend.

XVIII. Substantial preliminary work has been finalised towards the commencement of our Capital Projects using the Public Private Partnership (PPP) model. We anticipate the commencement of the actual construction of the Supreme Court, the Industrial Court and Industrial Court of Appeal as well as the

Buhleni Magistrates Court during the course of the year. The Project Team has identified the Contractors and their financiers who will undertake the Capital Projects. Similarly, the Project Advisor has been identified to supervise the implementation of the Capital Projects.

XIV. We realise the importance of continuous training for our Judicial Officers and Senior Staff; hence, we have finalised a Memorandum of Agreement with the Republic of China on Taiwan for this undertaking to be achieved. Our Judges will be sent to Taiwan for further

training at the Judges Academy, and, our Magistrates and Senior Staff will be sent to the Judicial Academy. The Memorandum of Agreement is a product of my official visit in Taiwan in 2018.

XX. We have also partnered with the United Nations Development Programme (UNDP) to host various workshops and training for our Judicial Officers, and, these workshops have proved beneficial to our officers. We are also sending our Judicial Officers to sponsored workshops within the SADC region on constant basis.

XXI. The Judiciary has been criticized for failing to send our Judicial Officers for further training. What our critics fail to understand is that further training requires a substantial budget. It is common cause that our budget has been constantly reduced over the years by the government; hence, many of our projects could not be implemented. However, we understand the Siswati idiom which stipulates that dogs only bark at a moving vehicle and not a stationary vehicle. The Memorandum also includes the installation of digital equipment, provision of technical assistance, the supply of

recording equipment and other working tools such as computers, laptops and library books.

XXII. The Constitution guarantees institutional independence to certain State Institutions which are pivotal to our Constitutional democracy including the Human Rights Commission, the Anti-Corruption Commission (ACC) as well as the Elections and Boundaries Commission (EBC). The Judiciary is mandated by law to recommend the appointment of office-holders for these institutions. It is critical that these institutions operate independently from the government,

and, not treated as Government Departments. It is further critical that these institutions should be allocated and control their own budget. The Parliamentary probe into the operations of the Anti-Corruption Commission in 2018 should serve as a lesson to the Government not to interfere with the institutional independence of these organizations. During the probe the Government had sleepless nights trying to stop the probe and conceal the interference and abuse which was happening behind the scenes; a former Cabinet Minister banned staff from attending the Parliamentary probe.

Thereafter, he became indisposed and could not attend Parliament sittings.

XXIII. We reiterate the need for the establishment of the Law Review Commission, which is long overdue. There are many areas of legislation which need to be aligned with the Constitution. Some of the legislation date as far back as the colonial era. Similarly, the Law office should consider reviewing all legislation which conflict with the Constitution.

XXIV. The time has come to amend the Legal Practitioners Act No. 15 of 1964 with regard to the establishment, composition, powers and functions of the Disciplinary Tribunal. The Law Society has failed to discipline its members who misappropriate trust funds. Members of the public have fallen prey to unscrupulous Attorneys who prey on destitute widows and orphans as well as innocent people. Over the years the Law Society has connived, protected and even represented unscrupulous Attorneys in legal proceedings seeking redress to recover theft of trust funds. If the Disciplinary Tribunal is to be fully functional,

it should be established by an authority other than the Law Society with a mixed composition that will comprise Attorneys, Accountants, Auditors and other suitably qualified people. The authority should also provide for the Secretariat to the Tribunal.

XXV. Lastly, we wish to thank His Majesty King Mswati III and the Indlovukazi for their continued support and guidance over the years. It is our fervent hope that such support and guidance will continue to the foreseeable future. His Majesty as the Appointing Authority and the Head of State has over the

years acceded to our request to appoint Judges to our Courts. The continued escalation of new cases coupled with the existing backlog of cases will see the Judiciary pleading for the appointment of additional Judges. Furthermore, we thank His Majesty for providing a positive and conducive environment that enables the Judiciary to operate independently and in accordance with the Constitution.

XXVI. Accordingly, I declare that the Legal Year 2019 has officially commenced. The assembly is now adjourned till January, 2020.

Thank you and may God bless you all.

