

**SPEECH BY THE ATTORNEY GENERAL**

**SIFISO M.M. KHUMALO**

**ON THE OPENING OF THE LEGAL YEAR 2019**

**VENUE: HIGH COURT OF ESWATINI**

**DATE: 28 JANUARY 2019**

## **OPENING OF THE LEGAL YEAR 2019**

*Remarks by Attorney-General, Sifiso M.M. Khumalo*

*January 2019*

*High Court*

**May it please your Lordship Honourable Chief Justice**

**My Lords Justices of the Supreme Court**

**My Ladies and Lords Justices of the High Court.**

My Lord Hon CJ, I beg leave to recognize your specially invited guests –

**Their Lordships Justices of the Industrial Court**

**Honourable Minister for Justice**

**My Learned colleague Director of Public Prosecutions**

**My Learned colleague President of the Law Society**

**Colleagues in both Public and Private Practice**

**Honourable Magistrates**

**Members of the Diplomatic Corps**

**Distinguished ladies and gentlemen**

1. It is indeed an honour and pleasure this morning, to rise at your invitation Hon Chief Justice, to give a brief address on the opening of the 2019 Legal year.
2. From the onset I would like to thank you my Lord and the organizers of this event for inviting me. I do not take these invitations for granted.
3. Despite my deep appreciation for this ceremony, I have always wondered why we call today the High Court Opening. After all we now have the Supreme Court, and Courts are always open. Justice must be accessible at all times. A person who thirst for justice must be able to drink from the fountain of justice at any given time.
4. Upon conducting a research, I found that the answer to the theme Opening of the High Court lies in the origins of this ceremony. The ceremony is derived from the English tradition, dating back to the middle ages. The English Judges start their legal year in October, the judges return from a two - month break by marching in procession from the Temple Bar to Westminster Abbey – for a religious service and a breakfast hosted by the Lord Chancellor.
5. However, not only are our courts physically open, but the work of Judges, and courts is conducted in the open. Judges are and should be

available day and night, seven days a week, to deal with urgent matters. Maybe the time has come to re-think today's theme.

6. My Lord, it is obvious that the year 2019 has started with a lot of excitement and expectation as it comes after putting together of a new government.
7. My Lord at this very opening last year I remarked that 2018 was an election year. I urged the nation to take elections seriously, and elect people who will be equal to the task. It therefore gives me great pleasure to rise this morning, knowing that the country has a balanced cabinet team. All credit goes to His Majesty King Mswati III for the Cabinet appointments.
8. My Lord, if you allow me, I consider it timely that I pause for a moment and mention that the new administration has inherited an economy that is in bad shape. There has been a debate in some sectors as to whether we are underestimating or exaggerating, or whether we are overestimating our economic state, and indeed our political fortunes. The reality of the matter is that the economy is in an ugly state.
9. It is however comforting to see that government is facing up to the problems and addressing what can be addressed by introducing far-reaching austerity measures for the short and long term. And by

creating enabling conditions for ease of doing business for investors to start investing in Eswatini.

10. Martin Luther King in his final public speech said God has allowed him to see the mountain top. And he looked over and saw the promised land. My Lord, I want to share with you today that I, just like Martin Luther, have been to the mountain top and seen the promised land, the state of the economy will improve.
11. My Lord, I dare say igniting economic activity requires partnership and collaboration. It must be a national effort in which all of us work together to restore our economy to growth in the immediate term and prepare the ground for sustainable, inclusive economy for future generations to come.
12. My Lord, coming back home, I am pleased to note that members of our bench continue to fly at a high altitude beyond our borders.

With your leave Hon Chief Justice allow me to congratulate His Lordship Justice Nkululeko Hlophe's appointment as a member of SACU Trade Related Dispute Resolution Tribunal.

We also congratulate His Lordship Justice Ticheme Dlamini for his endorsement as a member in the SADC Electoral Advisory Council (SEAC).

Our judges have certainly become a force to reckon with in the Region. We have His Lordship Justice Mbutfo Mamba who is a member of the SADC Administrative Tribunal. We are advised he has all along been Judge President until October 2018.

We also recognize Justice Qinisile Mabuza who is Principal Judge of the COMESA Court of First Instance.

My Lords we recognize your accomplishments, and we wish you well as you execute your duties beyond the borders.

*Welcome How Sincerely Executive*

13. My Lord I am pleased to report that 2018 was by far a very active legislative year and with the cooperation of all stakeholders a total 24 Acts of parliament and a number of subordinate legislations were passed in accordance with the government legislative agenda. Whilst the Executive and the Legislature is to be commended for this achievement, it is apposite for me to publicly recognize my team for their relentless efforts, and willingness to go beyond a call of duty on many occasions to ensure, that government legislative agenda is delivered. Similarly I would also like to acknowledge and appreciate my team who worked relentlessly to represent government in complex cases.
  
14. With your Leave my Lord I will proceed to make special mention of some of these legislations:

Allow me start with the now Notorious Sexual Offences and Domestic Violence Act 2018, I say it is notorious because it is not well received in some sectors because of its retributive bite. A lot has been said about this law favouring women over men. My Lord this line of reasoning is wrong, and must be corrected. The Act seeks to eliminate gender inequalities in relation to power and decision making, and to provide protection to women and children who are the most vulnerable group in society which has resulted in a high incidence of their discrimination and abuse; I also wish to mention the passing of The Public Order Act which regulates public gatherings in line with International Standards.

15. My Lords both these Acts I have just mentioned were pivotal in reclaiming the country's standing in the African Growth and Opportunity Act otherwise known as AGOA. I also wish to make specific mention of the Election of Women Members of The House of Assembly Act 2018. This is the Act which saw the election of the four women from the 4 regions in the recent elections. We also have the Court Remote Participation Act of 2018, which provides for participation of parties in court proceedings by remote and the use of audio visual links so as to curtail time and contain resources and security risks. The Criminal Procedure Amendment Act which provide and regulate the use of records of previous convictions (fingerprints) for offenders by providing time frame for its validity.

16. My Lord, we have noted with disappointment that Lawyers don't partake in the passing of Legislation. Lawyers should know that they have a responsibility to play a role in the enactment of legislation by making meaningful contributions before the law is passed.
17. It is not uncommon to hear people say a legislation is the Attorney General's making especially when it's problematic. Judges in this very bench are guilty of having said the same in some instances. I wish to make it clear today that the Law giver is Parliament, Attorney General is a drafter of what comes out of Parliament.
18. My Lords, it is important to state that lawyers should be united in the goal of advancing the rule of law in the Kingdom and beyond the borders. In this regard, allow me to state that lawyers and judges are the guardians of the rule of law.
19. The rule of law is indispensable to a society. It allows us to resolve differences peacefully through reason and logic. The rule of law requires us to reserve judgment until we have heard from all parties and completed a fair process. One cannot reach reliable factual conclusions unless they first weigh the credible evidence. Typically one cannot offer reasoned legal opinions unless they consider conflicting arguments.



20. Allow me to state further that following the rule of law does not always yield the expected outcome. In fact, one indicator of following the rule of law is to respect a result which you do not agree with. However, such result must be respected because it is dictated by the facts and the law.
21. To illustrate this I will draw an example of a lawyer named John Adams who defended British soldiers who had fired on a crowd in what is commonly known as the Boston massacre in 1770 because he felt a “sense of duty” to accept the task. He endured harsh criticism in the court of public opinion. But in a court of law, he secured the acquittal of the British captain and six soldiers. Two other people were convicted but received only minor punishments.
22. During his closing argument, Adams famously said that “[f]acts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”
23. Those words remind us that people who seek the truth need to remain open to the possibility that the truth may not match their preconceptions.
24. Upholding the rule of law is not just about litigation in courtrooms. Every lawyer should accept a personal duty by teaching its principles.

As the legal fraternity, we should build legal structures that will protect the people for generations to come. That is a core duty of lawyers. We are always building a legacy, whether we realize it or not. We set an example for our colleagues, we enforce the rules for our clients (rules which we must firstly apply) and we lay a foundation for our successors. It is what the oath of office obligates us to do.

25. My Lords, I would not have done justice in my remarks if I were to sign off without reminding the nation of the importance of preserving, respecting, protecting and promoting Judicial Independence as one of the cornerstones or main pillars of our country.
26. It behooves all of us to jealously guard and protect the integrity, dignity and authority of our Courts. The role of the judiciary is to uphold the law and dispense justice to all persons alike without fear or prejudice.
27. If anyone is unhappy or dissatisfied with a decision or judgment of the court they must follow due process because that is exactly the reason why the Courts are hierarchical in nature. The judiciary is a self-correcting institution where judicial decisions are subject to scrutiny and correction from the lowest to the most superior court of the land. It is therefore very mischievous for anyone to try and tarnish the image of the Courts and bring it into disrepute through unfair, biased and oftentimes unenlightened criticism simply because they happen to not like particular decisions.

28. In this regard, Legal Practitioners are under a legal duty to assist the Courts through maintaining the highest standards of professionalism, showing utmost respect for the Courts and its staff at all times, following rules and procedures of the profession, preparing properly for their cases, presenting well-researched and articulated arguments, giving proper guidance but above all give proper counsel to their respective clients to accept and respect decisions and judgments of the Courts and to take appropriate steps whenever they are dissatisfied with them.
  
29. The blame game between the Law Society and the Judiciary should be a thing of the past, it is unprofessional and tarnishes the legal profession, upholding the rule of law is a cooperative venture between the lawyers themselves and the court.
  
30. The ultimate thing, whether you are a lawyer, the law society, a judge, the Chief Justice or the Attorney General, is that we are all serving the people that use the justice system. They are our ultimate Stakeholders and they are the people we have got our eyes on servicing.

The long-standing, accepted practice is that in the exposition of free speech and open public debate, judicial decisions and reasoning and outcomes can be critiqued. But what you can't and shouldn't do is question the integrity of the courts. We must balance the interest of

the legal profession and the judiciary as well as the citizens who go through the courts.

31. My Lord, may I also request the Law Society of Eswatini to seriously consider if it is still beneficial for the profession to import South African advocates to deal with cases in Eswatini. It is very disturbing to receive petitions from senior attorneys seeking to bring in South African Advocates on very simple matters, thus let it be known that from now henceforth the petitions must show very exceptional circumstances why my office should consent to that admission of a foreign advocate when we have our own advocates and many good lawyers. It does not serve your client to get a foreign advocate who would cost an arm and a leg when there are other lawyers that may deal with the matter. One must not be afraid to refer his client to other better equipped lawyers in the Kingdom.
  
32. Turning to the media, while it is inarguable that it must at all times be accorded their fundamental freedom of expression and not be stifled or gagged from properly executing their mandate to inform, educate, and entertain the public, they must be wary not to abuse that freedom but to exercise it responsibly, truthfully, fairly and professionally according to their training and code of ethics. This is because if the media sacrifices their professionalism and fail to report or publish accurately, fairly and honestly they can be part of the root causes of unnecessary sensationalisation and pitying of the nation against each other.

33. Members of the public, likewise, have the responsibility to learn and appreciate how the law and the courts function. Bias does not form part of an effective, fair, impartial and independent judiciary. Therefore, people must always do their research first before peddling unfounded allegations and distorting judicial decisions in pursuance or satisfaction of their respective agenda.
34. Judicial Officers on their part, have a constitutional duty to serve this nation as competently, diligently, fairly, professionally and speedily as is humanly possible, for justice delayed is justice denied.
35. As Attorney General, my main aim is to build a future-ready, world-class legal team that is able to compete with the best law firms in order to readily anticipate and serve Eswatini's interests for decades to come.
36. My message to lawyers is, have a higher sense of purpose and hold on to it. Do not be afraid to embrace and champion bold ideas for an even stronger and better legal system, and always with both your head and heart. As the saying goes, a winning horse runs out of oxygen half way through the race and runs the remaining on heart.

37. It remains for me to give my best wishes to everyone present here today for many happy healthy and fruitful years ahead. God bless our collective pursuits in 2019.

**I THANK YOU!**