



REPUBLIC OF NAMIBIA

MINISTERIAL STATEMENT

BY

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ON RECENT STATEMENTS REGARDING A JUDGE AND THE JUDICIARY

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National Assembly
Tintenpalast, Windhoek

[To Be Checked Against Delivery]

**Mister Speaker,
Honourable Members,**

1. It usually is a pleasure to ask for the floor in this August House. This time, it is not a pleasure. In fact, it pains me to have to be the one to put on record what I am about to speak into records of our deliberations.
2. Nonetheless, I expect that at the end of this statement, this House should speak with one voice, unequivocally, in terms of Article 63(2)(c) of the Namibian Constitution.

Mister Speaker,

3. The function of adjudicating in a Court of law involves a litigant coming to Court, taking another to Court, and in the end, only one of them ends up a winner in the adversarial nature of litigation before the Courts. It is therefore an unenviable task to adjudicate, as by design, guaranteed, somebody will always be unhappy. Yet it is a function which the Namibian Constitution bestows upon judges.
4. Judges exercise their functions to the best of their ability, and in keeping with the oath they take upon appointment, to administer justice to all persons without fear or favour. They do not have malice or improper motive when they perform their tasks. It is most inappropriate therefore that anyone should attribute improper motives to what they do. It is important that the nation hears me loud and clear.
5. It is against convention for judges to defend themselves. Judges are supposed to speak through their judgments only.
6. There is no concern that people may proclaim or manifest disagreement with certain judgments of the courts. Indeed, judges are not beyond criticism, when such criticism is founded. My concern is rather about personal attacks on members of the Judiciary which are clearly intended to lower the Judiciary's esteem in the eyes of the public. Scurrilous statements were recently made attacking the person of the Honourable Mr. Justice Maphios Cheda of the High Court's Northern Local Division.

7. Had those statements been made in court, the Judiciary could have dealt with them in an appropriate manner. However, all of them have been made in the public domain outside the court, on social media platforms. Given its constitutional position referred to earlier, the Judiciary is unable to respond thereto. It has neither the means nor the power to investigate whether these statements do not constitute a crime and, if so, to institute prosecution and bring the perpetrators to justice.
8. Moreover, it is inappropriate for the Judiciary to participate in public debate and to challenge the veracity of these statements in the public domain. This responsibility is left to the other organs of the State and their agencies in the fulfilment of their constitutional obligation to:

“accord such assistance as the courts may require to protect their independence, dignity and effectiveness...”

Article 78(3) of the Namibian Constitution

9. In view of the increased frequency and escalation of the attacks, the public's perception may well be that there is substance in them, and failure to respond thereto or to act thereon is likely to be regarded as confirmation of those perceptions. Again, I would like the nation to hear me loud and clear - If any member of the Judiciary has misconducted him or herself, any person feeling aggrieved is entitled to bring a substantiated complaint to that effect to the Judicial Service Commission for investigation. That is the forum created by the Namibian Constitution where complaints against members of the Judiciary must be addressed. Not Facebook, not Twitter, not WhatsApp or any other platform.
10. Public confidence in the integrity, independence, dignity and effectiveness of the courts is the basis on which respect for the Judiciary is premised. It is a necessary ingredient without which Namibia as a constitutional democracy cannot effectively function. Hence, I make this statement, to seek to inform particularly my young compatriots, those that have been persuaded to join an unfortunate demonstration to the High Court at Oshakati, that you are unfortunately going up a dangerous and perilous road.
11. I do not take issue with your right and freedom to association and expression – not at all, and as long as your so doing is civil. No threats of violence, no need for tear gas. Convince your organizers to file a complaint with the Judicial Service Commission if they have grounds for a complaint.

12. If you feel that there was any other infringement of law, go and report a police case. If there is corruption you suspect, by anyone, report it to the Anti-Corruption Commission.

13. What you should not do, and which is the basis for my statement today, do not demonize and attack the *personae* of judges. Disagree with a ruling, and write literature and seek to outline your view of correctness. Yet as I say, do not attack the Judiciary as an institution. Wither down the respect for the Judiciary, and we start eroding from the pillars that hold our house up tall. This house, the Namibian House, was built on the blood, sweat, tears and other sacrifices. It is not to be easily forsaken and we will protect it!

Mister Speaker,

14. Lastly Mr Speaker, media reports suggesting that the Judge was removed need to be corrected. In terms of section 10(3) of the High Court Act, 1999 (Act No. 16 of 1999), a senior judge may request that a full bench be constituted to hear matters, which in his or her opinion are of importance to warrant that a full bench, as opposed to a single bench Court, adjudicates the matters.

15. This is what has happened. The matters are proceeding for trial, there are some interlocutories, but the matters are proceeding in terms of the High Court Act, 1999 and the Rules of Court. No Judge has been removed.

16. I urge all of us, whether Members of Parliament or common folk, to exercise some degree of maturity when handling these matters, and certainly, we should ask ourselves twice if what we do as agents provocateurs can be reversed.

I thank you.

End.