



**Republic of Namibia**

**MINISTERIAL RESPONSE TO QUESTION NO. 26**

**BY**

**HONOURABLE LUKAS. N. HAMATA**

**ON 13 MARCH 2024**

**IN THE NATIONAL ASSEMBLY**

**BY**

**THE MINISTER OF JUSTICE**

**YVONNE DAUSAB, MP**

**25 April 2024**

**– To be checked against delivery –**

**Honourable Speaker,**

**Honourable Members,**

1. I rise today to provide a response to the Questions raised by Honourable Lukas Hamata with respect to the judgement in *Phillemon v Minister of Justice*<sup>1</sup>, which was delivered on 8 March 2024.
2. From the onset, I would like to state that having courts preside over matters regardless of the outcome is crucial in a country like Namibia to uphold the rule of law, ensure fairness, and protect individual rights.
3. In a democratic society, courts serve as impartial arbiters, providing a forum for the resolution of disputes and the interpretation of laws. Regardless of the outcome, the judicial process fosters trust in the legal system, promotes accountability among all parties, and prevents the abuse of power by ensuring that decisions are made based on evidence and legal principles rather than arbitrary factors.
4. More generally, this commitment to judicial independence and impartiality is essential for maintaining social stability, fostering public confidence in the legal system, and upholding the principles of democracy and human rights in Namibia.

**Honourable Speaker,**

**Honourable Members,**

5. In respect of question 1, I do not agree with your view that the decision of the court may have resulted in the erosion of public trust in myself or the Ministry. The decision I took then was in the public interest and was not frivolous.
6. My decision was reviewed and set aside by a competent court of law. In our country, numerous administrative decisions undergo similar scrutiny, wherein certain decisions are upheld others are set aside. It is essential to note that these administrative determinations are made in good faith by the relevant administrative actors, in accordance with their statutory obligations and responsibilities.

---

<sup>1</sup> *Phillemon v Minister of Justice* (HC-MD-CIV-MOT-REV 2003/00178) [2024] NAHCMD 100 (8 March 2024)

7. The outcome of judicial challenges varies, demonstrating the dynamic nature of our constitutional democracy, as enshrined in Article 18 of the Namibian Constitution. This provision ensures the protection of fundamental rights and liberties while allowing for the checks and balances necessary for the effective functioning of our administrative and political system.
8. Moreover, the decision was taken following very inflammatory tribal remarks that caused a public outcry, but the court has decided, and we abide.

**Honourable Speaker,**

**Honourable Members,**

9. Regarding the question of why outside lawyers were instructed instead of relying solely on the Government Attorneys, it's important to understand the role and capacity of the Government Attorney in our legal and institutional set up.
10. The Government Attorney serves as the legal representative of the government. This means all its offices, ministries, and agencies.<sup>2</sup> Essentially, it functions as the government's law firm, akin to any private legal firm.
11. It's worth noting that the Government Attorney does have the authority to engage private legal practitioners to augment its services. This is particularly common in cases of complexity or those with a significant impact on the government's interests. Often, this decision may arise due to capacity constraints within the Government Attorneys Office.
12. Currently, the Government Attorneys Office operates with 42 government attorneys of which 18 are candidate attorneys, managing approximately 4535 active files. With each senior lawyer<sup>3</sup> on average handling between 100-387 active cases, and candidates between 30-80 active cases. It is evident that the office operates under significant workload pressure. In order to mitigate delays and ensure efficient handling of matters,

---

<sup>2</sup> According to the Government website, we have a total number of OMAs 34, which is made up of 7 Offices, 18 Ministries and 9 Agencies. Available at: <https://www.gov.na/> Last accessed 25 April 2024.

<sup>3</sup> See breakdown shared during budget debate.

it becomes necessary to enlist the services of the independent legal profession, in appropriate instances.

13. This practice of outsourcing legal representation in complex matters is not unusual and has in fact been a standard practice for years and continues to be a significant part of our government legal service and advice profile. Outsourcing certain cases is therefore a pragmatic approach to ensure that legal issues are adequately addressed within the very time sensitive constraints we all operate.
14. Any further issues that relates to this practice can be directed to the Right Honourable Prime Minister for her consideration and reply.

I thank you and so submit.