

WELCOME ADDRESS

by Mr GS Chili, the Chairperson of the KwaZulu-Natal Association of Public Sector Lawyers (KAPSL) at the Launch and 1st Colloquium held at Elangeni Hotel, Durban, KwaZulu-Natal: 8 October 2010

Honourable Judge Tshabalala, former Judge President for the Natal Provincial Division of the High Court and Patron of the KwaZulu-Natal Association of Public Sector Lawyers

KAPSL Honorary Members present

Representatives of the organized legal profession:

Black Lawyers Association (BLA)

National Democratic Lawyers Association (NADEL)

Advocates for Transformation (AFT)

South African Women Lawyers Association (SAWLA)

Executive Committee members of KAPSL and ordinary members of the Association

Honourable members from the KwaZulu-Natal Provincial Legislature and representatives of political parties

Heads of Department present

Chairperson of the KZN Planning Commission

Representatives from the Department of Public Service & Administration led by Dr Allen Kornegay

Senior managers from all spheres of government

Representatives from organized labour

COSATU

NEHAWU

PSA

Ladies and Gentlemen

It gives me great pleasure to welcome you to this historic event where we are launching our Association, the first of its kind in the province and the public service as a whole.

Allow me, if you will, to say that the Association being launched here today has had its genesis from the Public Sector Lawyers' Forum (PSLF) which forum is constituted by personnel drawn from the different provincial departments legal services components who meet from time to time to discuss matters of common interest and share information as legal advisors from the respective departments.

However in June 2008, after an extensive consultation and debate, a constitution that gave birth to the KwaZulu-Natal Association of Public Sector Lawyers was adopted and subsequently at an annual general meeting held in November of the same year, elections were held that put the current executive committee of KAPSL into office. Let me hasten to mention that the constitution of our Association has a justiciable code of ethics that govern members conduct.

In taking up the task assigned by members of the Association to the leadership of the Association, a program of action was put together and it is contained in the current business plan document that was drawn up and presented for approval at the plenary meeting of the members. The said business plan document identifies five focus areas :

- Organizing and empowering the public sector lawyers in Kwa Zulu Natal
- Improving linkages between CBO's , NGO's and Chapter 9 Institutions to ensure that civil society accesses human rights services offered by such institutions
- Providing assistance to indigent persons within the community
- Improving relationships between departments and the provincial Office of the State Attorney; and
- Lobbying for improvement in briefing and briefing patterns of PDI's

The code of ethics on the other hand is made up of different parts and just to highlight some of the provisions that are relevant to today's Colloquium topic are article 16

dealing with prohibition of acquisition or assignment of right or interest to, or in, subject matter of legal dispute. Read with the aforesaid article, is article 24 dealing with the disclosure of special relationships and removal of possible conflict of interest and article 28 is on the acceptance of fees by members of the association as well as article 29 dealing with performance of other remunerative work without prior consent of the member's employer.

Since the inception of the Association, a lot of work and man hours has been expended in realizing the dream that the Association stand for, more particularly around the focus area dealing with the empowerment of public sector lawyers and formation of linkages between the CBO's, NGO's working with civil society in providing access to services.

To this end we have partnered with the University of KwaZulu-Natal's Centre for Adult Education and The Natal Witness wherein a series of articles on community interest issues (penned down by KAPSL members) have been published through the Learn with Echo supplement. Some of the articles that have been published relate to:

- How members of the public may access to the Small Claims Court;
- How to access the different social grants falling within the mandate of SASSA; and
- Appeal mechanisms available to persons whose applications for social grants have not been favourably considered.

We believe this partnership has helped us achieve one of the key objectives of the Association and we are looking for more similar partnerships with other newspapers that are circulating in the province, to come on board for the benefit of our communities.

We are also working on opening periodic law clinics, particularly in underprivileged communities, with the aim of assisting members of the public with, among other things, basic legal advice, accessing some of the social services as well as economic development opportunities that government has to offer. These law clinics will provide public sector lawyers who are members of KAPSL with an opportunity to do social responsibility work during their own spare time. They also remind us of our responsibility to be selfless and to care for those who are underprivileged and poor. The law clinics will also have the effect of supporting the flagship programme of provincial government which is coordinated from the Office of the Premier.

In our quest for strategic partnerships, we have also built a strong working relationship with our colleagues that are in private practice and together we came up with the working arrangement under the banner of the KwaZulu-Natal Legal Forum. The aim of this latter forum is to unite lawyers in the province with the view to advancing and promoting matters of mutual interest. It was through this strategic partnership that some of our colleagues who are in private practice offered to draft wills for free for provincial government employees during the Wills Week. The issue of having a will in place may seem basic, but you will be surprised by the number of public service employees who die intestate. We could not take full advantage of this initiative as it coincided with the public sector strike, but the point is, the Wills initiative is as a result of the strategic partnership between public sector lawyers and those in private practice.

We are humbled by the amount of hard work that has gone into the KwaZulu-Natal Legal Forum and it is befitting in the occasion like this to single out and applaud Mr Comfort Ngidi and his team of dedicated selfless members of the legal forum for the work well done. I am also proud to say that Mr Ngidi is one of our honorary members.

The other strategic partnership that we have succeeded to forge involves the provincial government cabinet cluster on governance and administration. We have, as an association, made a presentation of our program and we have had a very warm reception and support especially from members of the cluster including the then Chairperson of the said cluster, Ms Bacus, HoD for community safety and liaison. Not only did we present ourselves to the G & A cluster but we had the similar presentation and reception from the committee of heads of department (CoHoD). We are always grateful for the support we have received from these governance structures.

What do our members stand to gain by subscribing to what KAPSL stands for?

Whilst I always have a problem with a person who asks that question in circumstances where we should be selfless and plough back, I will answer the question nevertheless. KAPSL has done an audit or investigation of the skills base within the ranks of public sector lawyers. The outcome of that investigation revealed that a fair amount of public sector lawyers are not sufficiently qualified. What do I mean by this? We have established that certain public sector lawyers have, due to financial pressures, not had an opportunity to serve articles of clerkship or pupillage in order for them to become fully-fledged attorneys and advocates respectively. Due to the long term financial

commitments that people enter into when they are in full-time employment, it becomes difficult for the abovementioned group of lawyers to leave full time employment to go and serve articles or pupillage. Conscious of this reality, KAPSL intends engaging the employer on this matter and would propose that, using the money that is set aside for skills development, public sector lawyers must be allowed to serve articles of clerkship or pupillage for the required qualifying period and whilst doing so retain their full salaries for the period of articles or pupillage.

At the end of the period, we would suggest that, it should be the material term of the agreement that the employee who benefited from this empowerment initiative should return to the employer department and pay back through a number of years of agreed service. It may also be argued that, due to inactivity, even the appropriately qualified public sector lawyers would need to be re-trained and re-skilled in order to sharpen their drafting skills.

How is the employer going to benefit?

In terms of the Skills Development Act, the employer has a duty to develop its employees. Therefore, through this initiative, KAPSL would be assisting government to fulfil its statutory mandate on skills development. This initiative also speaks directly to Outcome 12 of the laudable Outcomes Based Approach To Service Delivery that was introduced at the beginning of the term of the current government. Also, we have since discovered that there is no real legal impediment that prevents attorneys and advocates employed by government departments, state enterprises and municipalities from appearing in court. Therefore, it goes without saying that, in the long term, the capacitation of public sector lawyers will result in huge savings on litigation expenditure by organs of state. The underlying long term benefit of this initiative is in fact the much spoken about transformation of the judiciary in that it will, firstly, increase the pool of lawyers and secondly, arrest the ever declining number of lawyers that we need for *inter alia* appointment to serve as magistrates and judges.

We envisage that our members who undergo this process should not be limited to serving articles of clerkship or pupillage with state institutions. Instead, we propose that this be open to both state institutions (i.e. State Attorney or Legal Aid), attorneys as well as advocates that are in private practice. The modalities of this initiative will be presented to the employer at an appropriate time.

We hold a firm view that the state employs a number of qualified lawyers that it does not benefit from to the extent that it should. When one looks at the small claims court, for an example, we think that there is no rational basis why qualified lawyers in the employ of government should not be allowed to serve as commissioners in the small claims court. All that needs to be done, probably, is to remove a few legislative barriers that are there in the relevant Small Claims Court Act that, in our view, have got nothing to do with skill and competence that public sector lawyers have.

The question that a practicing attorney or advocate is probably asking himself or herself at this point is; ingabe lokhu kusho ukuthi ngeke sisawathola amainstructions namabriefs from government when KAPSL realizes this objective? The answer is a big NO. Look at it this way, whilst government has in its employ the state attorney as well as lawyers attached to the respective government departments, lawyers in private practice still do get, from government, litigation instructions and briefs, requests for the drafting of contracts, requests for legal opinions, requests for the drafting of bills etc. The point that I am making is that, do not be afraid, the cake is too big to be dented by this initiative. But most importantly, colleagues, all lawyers have a duty to proactively think about innovative ways to promote and preserve the integrity and nobility of the legal profession, and that is what we are trying to do.

These steps that we have taken represent two things that drive our Association, namely, **courage** and **inspiration**

Courage, is an attribute which is defined as an ability to do something that frightens one or it means to be brave. Inspiration, on other hand, I would say is what we have in abundance in this country. Amongst the most celebrated lawyers South Africa has ever produced is our revered and internationally respected lawyer and statesman Dr Nelson Mandela. His courage in standing for justice, equality and freedom is today an inspiration to the rest of the world. We are acutely aware that the road we have chosen to travel on is not virgin road but we do so recognizing the sterling work and contribution of the towering giants that have traveled before us. Their commitment to social justice is what inspires us. We are but immensely grateful to them

We are indeed inspired by the courageous deeds that we read about in today's history books and autobiographies. One such book that I want to make mention of is written by

Richard Stengel, titled *Mandela's way, lessons of life*. In this book Madiba sees courage as the way we *choose* to be . He says none of us is born courageous but it is all about how we react to different situations. Thanks too to one of the distinguished jurist of our time Justice Albie Sachs for his inspirational book titled *The Strange Alchemy of Life and Law*, particularly the written contribution penned by Judith Mason “ The Man Who Sang and the Woman Who Kept Silent”. The subject Mason wrote about is also found in Max du Preez's book, titled *Of warriors , lovers and prophets, the unusual stories from South Africa's past*, Chapter 18, where he writes about the “Breast Feeding Warrior”. I am inspired by what I see as an example of classic courage and bravery

Let us also not forget that in singing the praises of our esteemed country men and women, there are those more closer home who we cannot afford not to sing their praises too. I am inspired by our Patron, Judge Shabalala for his selfless contribution to the legal profession in particular and to the people of this country, generally. His contribution stands out in such a way that it would be difficult to match for generations to come.

Once again as praise singers of our time, let it not be forgotten that this province has, since the democratic dispensation produced two Chief Justices, namely, Justice Langa and our current Chief Justice Ngcobo.

At this point I would like to invite public sector lawyers working for any organ of state (national department, provincial department, municipality or public entity) within the Province of KZN, who are not yet members of KAPSL, to join KAPSL, because as they say “Together, we can do more”. We define a public sector lawyer as any person in the employ of an organ of state in this province, but who has a legal qualification. Our annual subscription is a paltry R250.00.

I cannot help but end by expressing our heartfelt gratitude to the Director–General for the Province of KZN, Mr NVE Ngidi and the Office of the Premier, and the entire provincial government under the leadership of Dr Mkhize for believing in us as KAPSL, thank you so much Hlomuka. I would also like to extend special thanks to Ms Yasmin Bacus (HoD: Community Safety and Liaison) and Mr Chris van Niekerk for the unwavering support that they have given us to get us where we are today, we are heavily indebted to you. To our heads of different departments, thank you.

Last but certainly not least, I want to extend special thanks to the ordinary members as well as the Executive Committee of KAPSL. You guys are truly amazing. I am certain that as you sit here today you realize that although it wasn't easy, but it was worth it. Mahatma Gandhi teaches us that "You must be the change you wish to see in the world." Let us all live up to that.

Thank you very much