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THE BLA SUPPORTS JUDGE MOTHA STANCE ABOUT TRANSFORMATION

The BLA was established to advance the course of African law practitioners who suffered from the effects of exclusion from opportunities. In 1977, when it was formed, the challenges African lawyers were confronted with were reflective of societal challenges, from Africans' perspective. Fast forward to 2024, some of the challenges may have been resolved. Many remain.

Dr Mokgonane Pitje, one of the societal heroes, and a guiding father of the BLA, whose work will perpetually guide us, would have smiled when he notes that there are no longer seats reserved for Whites and some for Africans. His smile would end there, as is ours.

Judge Motha's directive for legal representatives to explain their white-only legal teams comes at a time when our society and the legal profession is coming to grips with the impeachment of Judges' Hlophe and Motata. Or should we say, the African part of the profession was attempting to understand this and what it means for transformation agenda of society and the legal profession itself?

Like Comrade Pitje frowned upon apartheid rules in courts, we cannot smile when a team of lawyers which argues empowerment of Africans, doing so for a Commission tasked with an obligation to protect and advance transformation, deems it meet to be represented by a legal team as was the case in the matter before Judge Motha (Commission matter).

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Under this leadership, in line with the BLA's commitment to devote its efforts to transformation, we deem it proper to pen this statement within the broader understanding of the Constitution of this country.

The Preamble read with sections 1 and 9 of the Constitution, considered together with section 217, clearly declares our Constitution as a transformative document. In the context of Judge Motha's directive, the Constitution should be understood to enjoin the legal profession to empower African legal practitioners in particular. Whilst the Constitution calls upon society, it is our understanding that a purposive interpretation would call upon each sector of society to transform within its realm.

Broad-Based Black Economic Empowerment (BBBEE) Act demands, as stated in section 1, economic unity. Judge Motha's directive should be understood in this context and within the prism of the Constitution, as set out above.

It is a fact that a majority of African lawyers are starved of opportunities. Empowerment is not just law but one which affects human beings, their development and improvement of their skills and knowledge. The question should be, after all is said and done, should the current inequality remain?

As the BLA, we acknowledge that a client has a right to be represented by a team of his/her/its own choice. In practice, however, the appointment of Counsel is largely informed by the attorney of record and/or the legal division of the client company. In the context of the matter which served before Judge Motha (Commission matter), the instructing attorneys and the Commission would not have any sound reason why its team did not include black lawyers.

It is our considered view that the law should not be further developed in the absence of Africans. Jurisprudential development would, in the context of the case in question, have been grounded in the submissions of the legal teams. Absent an input from African practitioners, law which affects Africans, would have been developed without

them. As the BLA we should hold true to the saying: “**Nothing about us without us**”.

It does not end with the commission, the company involved in the litigation, too, is bound to contribute to transformation in so far as briefing patterns is concerned. Therefore, even if they were to say they had a right to choose who should represent them, we believe that they could have identified black legal practitioners to be in their team.

The composition of the legal teams clearly indicates the skewed briefing patterns. In our country, given the constitutional transformative mandate, our trajectory should result in a society based on the achievement of equality. We should heed the position of the Constitutional Court, in the street name matter, between *Tshwane Municipal Council and Afri-forum*, in which it was held that all of us are enjoined to actualise the spirit, purport and object of the Constitution. The Constitution seeks to redress the injustice of the past and to serve as a foundation for the briefing patterns to ground the achievement of equality in the legal profession. That cannot be achieved if the current briefing patterns are to be retained.

The BLA laments this skewed briefing pattern as we understand its far reaching implications. People and the state, together with all its parastatals and entities, must understand or be reminded that the briefing patterns as whole forms part of the development of the legal system. The legal system must be strong and independent to produce a strong and independent judiciary. All legal representatives who appear in these kinds of matters, acquire such skills and knowledge as is required in the development of the jurisprudence of this country. Therefore, it is imperative that in briefing the legal teams, we must appreciate the bigger role we are playing.

The above considered, it is disheartening and disappointing that the very entity that is supposed to be at the forefront of redress acts in a manner which contributes to entrench skewed briefing patterns.

In essence, Judge Motha must be hailed as a transformation activist who depicts a Judiciary that is alive to its responsibility and the BLA applauds him for having the courage to deal with the issue as he did. On matters of transformation, Judges must not fold their arms and play spectator roles.

Moving forward, the Judiciary, led by the Chief Justice, President of the Supreme Court of Appeal and Judges President should play a special role in giving effect to transformation. The Constitution enjoins them to do so. The BLA is working to develop measures to force government and other entities to brief black practitioners. Wait until we, inspired by Judge Motha directive, announce transformation-grounded solutions. The publication of this statement at this hour, was grounded by our deep reflection. Resultantly, while we express concern, we intend to apply our minds to the future, as we shall.

As the national anthem reminds us, we shall live and fight for freedom. We should and shall.

Prepared by

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