

**ADDRESS BY HON. CHIEF JUSTICE PETER SHIVUTE  
AT THE OPENING OF THE WORKSHOP  
ON CIVIL CASE MANAGEMENT  
IN THE HIGH COURT OF NAMIBIA,  
SUPREME COURT BUILDING, WINDHOEK,  
30 JULY 2013**

(Salutations)

It gives me great pleasure to welcome you all at the Supreme Court and to make a few remarks at the opening of this historic gathering.

We have gathered here with a twin objective: to take stock of what the introduction of case management in our civil practice has achieved and to introduce the legal profession to the proposed new rules of the High Court.

Civil case management was introduced at the High Court where the need was found to be greater in 2011 as a response to

challenges of case backlog, concerns over ever-increasing costs and delay in finalisation of cases. However, what may not have previously been publicly recorded is that judicial case management system was also introduced as a conscious effort by the leadership at the judiciary level to introduce judicial reforms to improve the performance of the Judiciary and to make our country competitive globally. Coupled with case management system is the proposed introduction of electronic filing system (EFS) that allows the legal community to electronically file civil cases both at the Supreme Court and High Court. Case management system (CMS) allows the courts to manage civil cases filed by legal practitioners. The EFS and the CMS will constitute an e-Judiciary system that we seek to develop initially for the Supreme Court as well as the High Court in Windhoek and Oshakati.

For centuries, the appraisal of the efficiency of judicial institutions has focused on the courts' ability to function independently and impartially. These fundamental characteristics of judiciaries are evident in our constitutional text and practice. However, it has now widely been recognised that there is a direct link between a country's ability to attract foreign investment and the performance of the courts, particularly in the commercial sphere. A country that does not reform its judiciary to stimulate economic growth is therefore unlikely to attract sufficient foreign direct investment. Whilst the principle of independence of the judiciary remains important today, globalisation has also seen the necessities for judiciaries to react to the concerns of corporate undertakings within their jurisdictions. As the State may be a party to many agreements with foreign investors in particular, the latter need to know that they are in a horizontal relationship with the public institution involved in the agreement. If vertical relations exist in

commercial transactions with the State, foreign investors may find the potential risk not worth bearing. Potential investors do not only look at a country's political stability, but also at the legal environment in the country concerned. They may thus decide to expend vast amounts of money to invest in a country where they are guaranteed that courts in that country are independent and efficient. The reform initiatives are thus aimed at reinforcing this objective.

Namibia is still a developing and young democracy. Thus, our primary focus has rightly been establishing legal frameworks, and enforcing as well entrenching the rule of law. Nevertheless, we should not lose sight of the fact that the judiciary is a key driver to the country's economic development. In the context of economic development, the primary role of the judiciary is to determine, enforce and protect constitutional as well as contractual rights and obligations of parties. This is an inherent

obligation of the courts as part of their exercise of the judicial power conferred on them by Art 78 of the Namibian Constitution.

In the last four decades, the World Bank and other international organisations have worked hard to promote judicial reform as a tool to improve economic progress in a number of countries. This initiative stems from the realisation that there is a clear link between efficiently working court institutions and economic development. Since many emerging nations struggle to adequately finance their public institutions, these international organisations were able to loan and fund many initiatives to increase financial resources required to operate the judiciaries. In Namibia, so I am advised, Government has been able to fund the reforms from own resources. This is laudable commitment. Government's continued support is crucial to the success of the reform initiatives. These initiatives naturally make additional

demands on the country's resources. They will of necessity require, amongst others, the appointment of additional judges and skilled supporting staff to run the systems. They would require the procurement of hardware and software as well as a host of other IT infrastructure to make a success of the initiatives. The addition of skilled staff and emphasis on case management has proved to contribute to the efficiency of the judiciary and to add to economic progress elsewhere in the world. In the long run, therefore, money spent on judicial reform initiatives is an investment in itself, in that an efficient judicial system complements and promotes economic growth. Economic growth and ensuing prosperity in turn will contribute to the growth and efficiency of legal institutions. The result is a win-win situation.

Director of Ceremonies,

I am advised that the results of case management in Namibia by and large are positive as highlighted by the following factors:

- Tactical delays have been reduced as judges seek to expedite the completion of cases;
- Trial dates are less often lost due to unpreparedness;
- Legal practitioners tend to consult with clients earlier than before;
- Settlements have increased because trial preparation occurs much earlier than before and parties are required to seek more earnestly to limit issues and areas of dispute;
- Issues for adjudication are more clearly defined than before; and
- Trial dates are now seldom lost because judges tend to discourage postponements.

Although these results are encouraging, areas for concern remain and these include the following:

- It is not all too clear if the objective of reducing costs has been achieved. This is a matter to be debated and investigated;
- There is a lack of uniform application of case management by the judges. Although this may be expected, it is an issue that needs refining;
- Legal practitioners' resources and time have stretched because of exponential increase in case management activity.

These concerns should not deter us from devising adequate judicial initiatives to contribute to the success of the reform programme. E-Judiciary is the way forward in a modern judiciary and there can therefore be no turning back on these initiatives.

As earlier alluded to, a country that does not innovate runs the risk of lagging behind.

Director of Ceremonies,

I am aware that change such as that brought about by case management always leads to some anxiety. Some of us have done that what case management seeks to change for a long time and may rightly or wrongly believe that conducting litigation the traditional way has stood the test of time and should not be disturbed. Some of us may simply entertain the fear for the unknown. Although it is human to entertain such ideas, it is worth remembering that change invariably is bound to be difficult or even painful. I am convinced, however, that this change is absolutely necessary and the path we have taken is the right one. It is good for our judiciary and it is good for our economy. It is good for our country and it is good for our people. As a legal fraternity, I urge you all to embrace judicial reform

initiatives to ensure that we deliver efficient and expeditious litigation to the public.

I am happy to note that the introduction of judicial case management in the High Court has received unqualified endorsement by the Supreme Court. Although the cases in which observations made in relation to case management did not directly concern the subject matter, the Supreme Court found it necessary to emphasise the importance of case management, thus adding its voice of support to the initiative in at least two of its recent judgments. In *Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation Ltd 2012 (2) NR 671 (SC)*, the Court commented at length on case management initiatives in paragraphs [86] to [89] and concluded in paragraph [89] as follows:

*"The main purpose of the JCM is to bring about a change in litigation culture. The principal objectives of the JCM are to: ensure that parties to litigation are brought as expeditiously as possible to a resolution of their disputes, whether by way of adjudication or by settlement; increase the cost effectiveness of the civil justice system and to eliminate delays in litigation; promote active case management by the courts and in doing so, not only facilitate the expeditious resolution of disputes, but also bearing in mind the position of other litigants and the courts' own resources; and inculcate a culture among litigants and their legal representatives that there exists a duty to assist the court in furthering the objectives of JCM."*

Similar sentiments were expressed in *Arangies t/a Auto Tech v Quick Build*, as yet unreported, delivered on 18 June 2013, the following was stated in paragraph [14]:

*"Delays of this sort in litigation are harmful, costly and inappropriate. They impair 'the inexpensive and expeditious institution, prosecution and completion of litigation', and at times also threaten the fair adjudication of civil proceedings. It is to avoid the harm caused by such delays that the High Court recently introduced a system of judicial case management in civil matters in the High Court. The goals of that system are to ensure that the adjudication of civil disputes is expeditious and fair, and the timely and diligent compliance with the Rules of the Courts will facilitate the achievement of those goals."*

This firm endorsement of the initiatives must therefore spur us all on to greater effort to embrace these reform initiatives and to ensure that they succeed. The country expects nothing less.

In conclusion, I wish to take this opportunity to thank the Honourable Judge President Petrus Damaseb for having given impetus to the implementation of the reform and for ensuring that the implementation process is as inclusive as practically possible. He deserves the support of all of us. It is this support and leadership that he provides at the High Court that will make a success of the initiatives.

With these remarks, it is now my pleasure to declare the Workshop on Civil Case Management in the High Court of Namibia officially open.

Thank you.