

Remarks by Petrus T. Damaseb, Judge President of the High Court of Namibia, at the launch of the book ‘*The Law of Pre-Trial Criminal Procedure in Namibia*’, Thuringerhof Hotel, 29 July 2014.

*Ladies and gentlemen
Invited guests*

I am truly honoured to have been asked to preside over UNAM Press’s latest book launch on a law subject, this time on criminal procedure, by a group of public-spirited, industrious and, no doubt, intellectually driven young academics. This is a book launch I could not miss under any circumstances: Firstly, an occasion such as this demonstrates that UNAM is not the mediocre institution some think it is. UNAM, in particular, the Law Faculty, has made enormous strides in producing lawyers who are making valuable contribution to the administration of justice in our country. A significant number of UNAM law graduates are successfully plying their trade in our courts. I see them every day in High Court and can bear testimony to the enthusiasm and commitment with which they are pursuing their chosen career. They have significantly added to the growth of legal practitioners and advisers in government departments, the wider public sector and in private enterprises. UNAM should be proud of its achievements. In the second place, the authors of ‘*The Law of Pre-trial Criminal Procedure in Namibia*’ are living testimony that all people, whatever their origin, are capable of bringing out the best in them if given an opportunity to study.

I would also like to commend Mrs Jane Katjavivi for her pioneering work in the publication of home-grown literature. I hope that her work will hasten the death of academic inertia in our country and herald the birth of a literary renaissance (call it a revolution if you will) so sorely needed in Namibia. In my chosen field, law, we are so dependent on South African legal reference material that you will be forgiven for thinking that we are still a fifth province of that country. I am mindful of the following wise counsel by Professors Hahlo and Khan in their seminal book ‘*The South African Legal System and its Background*’:

“ Ideas have wings. No legal system of significance has been able to claim freedom from foreign inspiration”.¹

Although I agree with that *dictum*, I must hasten to caution that unthinking reliance on reasoning processes by judges and academics commenting on their own legal system and practices, based on their own social, political and economic realities, can irreparably distort our jurisprudence. A notable and

¹ Hahlo and Kahn, *The South African legal System and its Background*, Juta, 1968 at p. 484.

welcome contribution by *UNAM Press* to our legal practice is the book by my colleague, Mr Justice Parker, under the title "Labour Law in Namibia". It is one title that is proving so valuable to the practising profession, the bench, conciliators and arbitrators and other labour law practitioners. The growth of Namibian legal literature is a dire necessity as Namibian statute and case law have assumed a unique flavor of their own. As our Chief Justice, His Lordship Mr Justice Peter Shivute, stated in the case of *Attorney –General v Minister of Justice and Others*:²

[W]hile South African and other jurisdictions' precedents may be persuasive authority for our courts ...it is worth observing that after our country's Independence, Namibian courts have developed a reservoir of distinctly Namibian jurisprudence based on the Constitution and Namibian law.

...

[A]s a general proposition, whilst foreign precedent is a useful tool to determine the trend of judicial opinion on similar provisions in jurisdictions which enjoy open and democratic societies such as ours, ultimately the value judgment that a Namibian court has to make in the interpretation of the provisions of the [Namibian] Constitution in as much as they may impact on the impugned provisions, must be based on the values and aspirations of the Namibian society.'

It is for that reason that rule 130 of the Rules of the High Court requires that practitioners must make every effort to rely on Namibian sources in arguing their cases and if they rely on foreign sources, they must satisfy the court that those sources are in harmony with Namibian law. It is against that backdrop that I commend the authors for their book on pre-trial criminal procedure. Your book is timely and necessary. It will serve as a ready reference source of current Namibian law for prosecutors, defence lawyers and judicial officers in respect of our pretrial criminal practice.

The law of procedure is close to my heart because the procedure of the courts is the transmission belt for justice. As head of court - a court which tries our country's most serious offences- I am always thinking of ways in which to improve our system of justice so as to facilitate greater access to justice for our people. Academic commentary- especially that which identifies weaknesses in our present practices - is therefore necessary to help us improve our practices. I hope we will see more of that going forward with the help of UNAM Press. I urge UNAM press to organise writers' workshops to impart basic skills in writing to identified groups who can write on important subjects. It is stating the obvious that in this country we need more, not less, writing and reading. We need to encourage a culture of critical dialogue and thinking. One hopes that those responsible for encouraging such a culture will engage professional groups in our society, through funded research, to do more writing.

² 2013 (3) 806 at 815, para 8.

Coming back to the reason for our presence here today, I wish to congratulate Clever Mapaure, Ndjodi Ndeunyema, Philisano Masake, Festus Weyulu and Loide Shaparara, for the initiative they have taken to produce a well-researched and carefully written piece that systematically chronicles both the statutory and case law framework governing pre-trial criminal procedure of our courts. I continue to enjoy reading your work and have no doubt that many will find it a useful guide in their criminal practices. All those practising criminal law in our country owe you a debt of gratitude for your ground-breaking work.

It is with a sense of pride in your achievements that I now officially launch and commend "The Law of Pre-trial Criminal Procedure in Namibia". Congratulations to the authors and *UNAM Press*.

I thank you.