

Probing questions about the implications of the "Shaanika case"

By Dr. T. Elijah Ngurare with inputs from the Columnist Paul T. Shipale

A retired journalist once observed that "the news media are money-making business...and are biased towards conflict because conflict draws readers and viewers...to the news media, harmony is boring". Evidently, both the editorial of the Namibian newspaper and of its political columnist Alfredo T. Hengari sought to cause conflict instead of harmony in their last Friday's writings. Their common theme was the resignation of Cde. Pendukeni Iivula-Ithana, Minister of Justice and Secretary General of the SWAPO Party with headlines like "Justice Minister must go" and "Ithana's continued stay at justice could undermine public confidence in the administration of justice". On its part, the editorial of the Namibian newspaper was asking the Minister to resign echoing Hengari who proclaimed that the justice minister "did not act in the interest of the republic or the public good" and that "undoubtedly Judge Majara's judgment tells us that our Minister of Justice undermined major principles and values that she ought to defend as a minister of Justice and a public official". This followed the acting Judge Nthomeng Majara's order, on the 15th day of July 2010, that "the conduct of the Minister



Camarada Elijah Ngurare

of Justice in failing to take action with regard to the dismissal of magistrate Shaanika, is in conflict with her statutory duty under section 21(3) (a) of the Magistrates Act No. 3 of 2003".

Since Hengari opined that there is a need for asking probing questions about the implications of the judgment with regard to public trust in Ithana's ability to lead the Ministry of Justice, we would dare bring in another perspective altogether to find out if there is more than what meets the eye here. As we see it, the issue is neither here nor there but has become more of interference and undermining others' work as well as tarnishing others with the jockeying with posi-

tions and internecine rivalries and political cum tribal wars with the daggers drawn out to backstab and plot the downfall of others through doctored articles and editorial slants portraying some as "incompetent and inefficient" presumably to trigger a chain reactions calling for the head of the minister to roll and drag her name in the mud for her downfall, by why?

It should be clear from the onset that we are not implying that magistrate Shaanika's record speaks volumes of her impeccable conduct nor are we implying that she is not without fault. After all, Magistrate Shaanika's case is not the first of the kind to be dealt with by same minister as many others have been dismissed on the recommendation of the Magistrates' Commission. The hard probing question, in or view: is the reader to believe that Hengari was unbiased when writing his article while in France, the way he did as a political Columnist and echoed immediately by the editorial of The Namibian newspaper in Windhoek?

What is clear is that the headlines in question have a potential to twist the truth and create unnecessary conflict. The media generally sets an agenda on selected topic as Shanto Iyengar, points out in his 1987 book *News That Matters*.

What this implies is that certain headlines are doctored to achieve a predetermined outcome in this case the resignation of the Minister of Justice for reasons not fully explained to the ordinary reader. Otherwise, why would they ask the President to "have the courage of his conviction to ask Ithana to appeal the judgment" or alternatively move her as a Minister who allegedly "has been seen to show more and more passion for her presidential aspirations as Secretary General of the SWAPO Party"? At no time did we hear the minister stating that she harbors any presidential ambitions. After all, she is not the only one holding fulltime SWAPO Party positions apart from government responsibilities, why singling her out? Nevertheless, the facts remain that this is not the issue here. The crux of this application relates to the interpretation of Section 21 (3)(a) of the Magistrates Act No.3 of 2003. Indeed, there was an application argued before Her Ladyship Acting Judge Majara from the Kingdom of Lesotho on the 19th April 2008 by Adv. DF Smuts SC instructed by LAC for the applicant, The Magistrates' Commission and by Dr S. Akweenda instructed by the Government Attorney for the first respondent, the Minister of Justice. Having since withdrawn her opposition, there was no appearance for the second respondent, Magistrate Shaanika.

The applicant herein, Magistrates' Commission, averred that the first respondent, Minister of Justice, had since 24th January 2008 refused and/or fail to sign a recommendation by the applicant in terms of Section 21 (3) (a) of the Magistrates Act 3 of 2003 to dismiss the second respondent from office on account of misconduct having been found guilty after disciplinary proceedings were held against her. The applicant's case is that in terms of the Act, the Minister does not have a discretion whether to act or not and has to do so upon receipt of the recommendation of the Commission.

In her answering affidavit the 1st respondent challenged the applicant's contention that the Commission is effectively the re-

pository of the power to dismiss a magistrate and that she is no more than the implementer of the decision. She charged that Section 21(3)(a) provides for a dual-making process as she is advised and verily believe. The effect of dual-making process is that the recommendation of the Commission alone is not enough to bring about a lawful dismissal of a magistrate from office. She further believes that the Minister is not obliged to act as a "rubber-stamp" in accordance with the recommendation of the Commission.

To summarize the 1st respondent's case, in terms of the Act specifically sections 21(3) (a) and 26(17) (ii) thereof, she is not compelled to act on the recommendation of the applicant unless she is satisfied on the documents submitted to her that due process has taken place. Further that she is not refusing to act but instead, the applicant has hitherto not made available to her all the documents that she requested from it.

The Minister insisted that, at all material times, she has been consistent and firm, namely, that she required relevant information in order to apply her mind to the matter thereby satisfying herself that the relevant provisions of the Act have been complied with before making a decision contemplated in Section 21 (30) (a) of the Act.

In the African and developing world contexts, Namibia has done extremely well in respecting its Constitution. Fears that our Constitution would have been torn up have proved to be unfounded, even with the ruling party enjoying an overwhelming majority in the legislature. All constitutional remedies typical of a liberal democracy are available and it is possible to take the government to court as exemplified by the Minister of Defense versus Mwangi's case of 1992 (2) and such judgments have always been respected and adhered to by State organs.

Our constitution allows the aggrieved party to seek redress by appeal according to Articles 25 and 18. The Minister may appeal to set the record straight and avoid negative precedents and repercussion. Indeed, the Minister is advised that there are good grounds of appeal, notably based on the fact that judge Majara's judgment on page 32 asserts that "the requirement for the submission of the documents is only meant to satisfy the minister that

there has been due process of the law". Notwithstanding this remark, the Magistrates Commission has not yet submitted all the documents to the Minister who has the discretion to dismiss or not as it is again stated at page 44 of the judgment that the requirements contained in Section 26 (17) (ii), namely, that the Magistrates Commission must submit the relevant documents to the minister "was intended to merely evince that due process was followed which led to the eventual recommendation for dismissal" [Judgment, page 50].

Further, Her Ladyship Judge Majara did not order that the Magistrates Commission must submit the documents to the Minister before she could dismiss. In another paragraph, Her Ladyship Judge Majara also agreed that "by requesting the documents, the Minister herein was not acting irrationally" [Judgment, page 50.] So this is not about the Minister undermining "major principles and values that she ought to defend..." or "using lame excuses or red herring to further delay the inevitable outcome" as alleged by the Columnist Alfredo T. Hengari and the last Friday's editorial of the Namibian.

The Minister might eventually comply with the decision of the Court after obtaining "the relevant information in order to apply her mind to the matter" thereby satisfying herself that the relevant provisions of the Act have been complied with before making a decision contemplated in Section 21 (30) (a) of the Act even during the process of appeal.

On the basis of the above analysis, it seems premature and politically opportunistic for our learned colleague Hengari and the Editorial of the Namibian newspaper to conclude that the Minister of Justice should resign. As for our decision to make an analysis on this matter the reader should amply be rest assured that it was not to defend the Minister of Justice per se but to look at what the Namibian Ombudsman would say "other side of the story". Thus in the interest of posterity, we plead for absolute respect for our systems of governance at all levels and bias reporting or character assassination of one another as leaders or citizens are counter-productive and are a reflection against our national goals embodied in Vision 2030 and against the tenets of the national harmonious call of One Namibia One Nation.

POLITICAL HISTORY OF SOCCER IN NAMIBIA

AFRICA'S PERFORMANCE and NAMIBIA'S CHANCES OF QUALIFYING FOR THE WORLD CUP BARRING THE NEGATIVE ELEMENTS OF TRIBALISM UNDER SPOTLIGHT

Cde. Seth Mataba Boois

All countries around the world has, by its nature and colonial background, a political history behind it.

From the just ended World Cup in South Africa, it is clear that Football is a huge sport involving national and International politics. It has the power to create peace or even war. Yes, El Salvador and Honduras went to war in 1969, quarrelling violently as to who should play in the World Cup and trouble riddled, earth quake destroyed Haiti came to a total standstill when the superstars of Brazilian National team visited that



Cde. Seth Mataba Boois

country amidst infighting about who should rule. Going forward, Ronaldo, Ronaldinho, and Rivaldo

(The famous 3-rr's) and others, brought peace and calm and the rivaling factions could sat down in peace.

Just like the bygone era of the Wonderful Easter-weekend tournaments (1960 -1989) in Tsumeb, World Statesmen, including President Hifekepyune Pohamba, were at the opening ceremony while the African political Icon, Nelson Mandela, blessed the closing ceremony with his presence! So we agree it its political game that has produced the likes of Nillo Taapopi and the late freedom fighter Danger Ashipala, who played for

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FOR THE CITY OF WINDHOEK



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Tender No.m 68/10

Title: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF MOTORISED GATE & CONTROLLER AT ELECTRICITY DEPARTMENT

Description: Supply, delivery, installation and commissioning of motorised gate & associated controller to meet the premises' safety requirement for an ingress and egress point.

Site Inspection: **Compulsory** Meeting will be held at Electricity Department cnr of Stokes / Armstrong Streets, on Friday, 30 July 2010, at 09h00

Closing Date: Friday, 13 August 2010 at 11:00

Tender Documents: Available as from Monday the 26 July 2010 at 14h00, at the Customer Care Centre of the City of Windhoek, Rev. Michael Scott Street, Windhoek.

Levy: N\$250.00 (Non-refundable)

Enquiries Technical: Ms. T.Usurua (Electricity Dept) - Tel: +264-(0)61-290 2456
Mr. Chunga (City Police) Tel: +264 61 290 3106

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Description: 2010 /AE //GAMS ARTS AND CULTURAL FESTIVAL, Tenders are invited from various service providers to provide the following products and services: Hiring of Stage, Sound equipment and lighting; Design and supply of T-shirts & tops

Site Inspection: **Compulsory** Meeting will be held at the Customer Care Boardroom, Reverend Michael Scott Street, on Wednesday, 04 August 2010, at 09h00.

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Tender Documents: Available as from Friday, 23 July 2010 at 14h00, at the Customer Care Centre, Rev. Michael Scott Street, Windhoek.

Levy: N\$ 150.00 (Non-refundable)

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