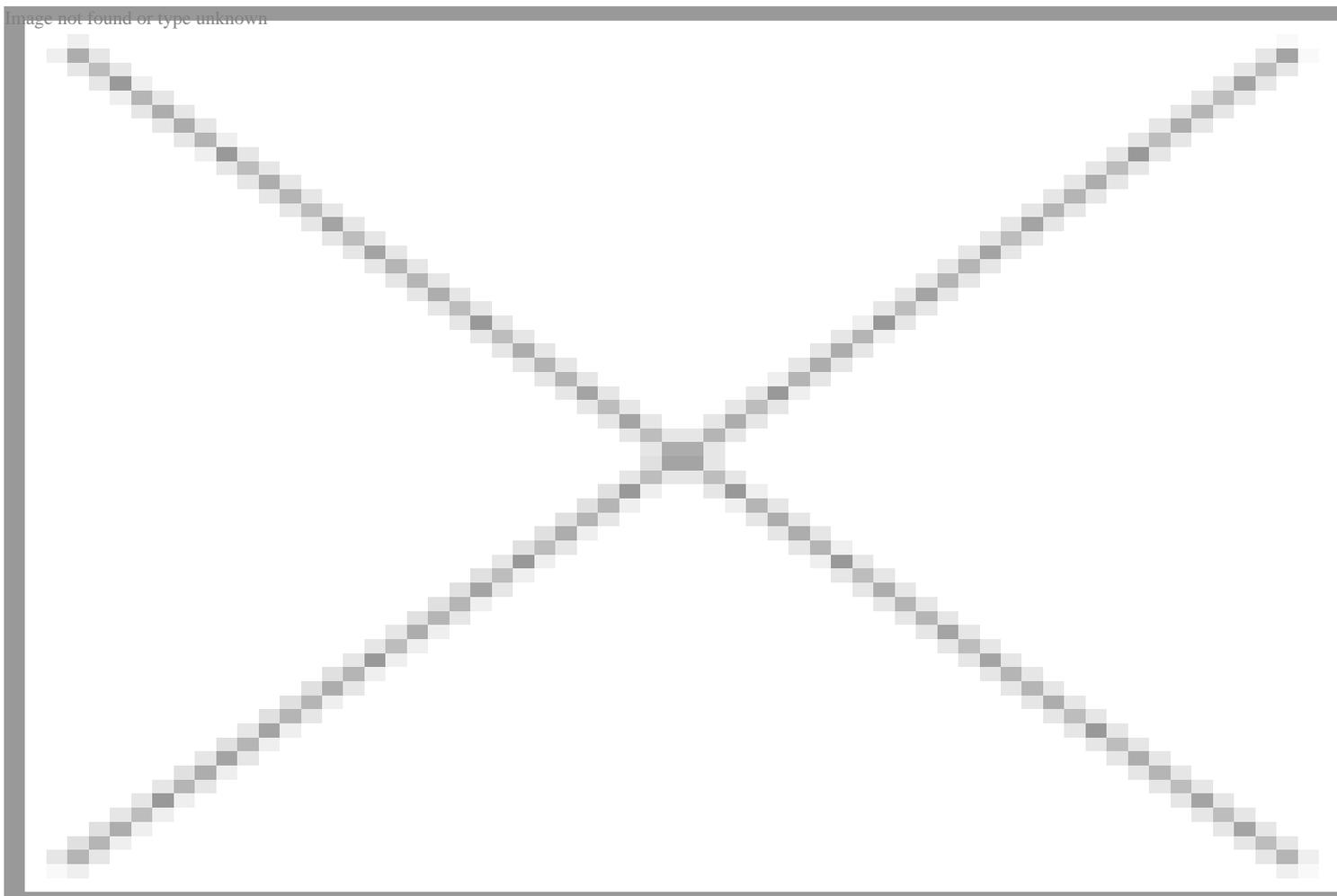


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Court bars suspended Chief Justice from entering Palace of Justice

By Carmel Rickard

IN a week of high drama, the Chief Justice of Lesotho has been ordered by the high court to stay out of the Palace of Justice and not to carry out any functions relating to her office. This follows her suspension, in apparent defiance of two court orders barring the government from taking steps to ask that the King suspend her.



[1]

THE court order barring the Chief Justice from access to the court complex was made by one of the CJ's colleagues and the judge appointed as Acting Chief Justice, Maseforo Mahase.

That order was the culmination of several days of fevered activity on the subject of the government's determined efforts to get rid of the CJ, Judge Nthomeng Majara.

On September 12, the King, acting on the advice of government, suspended Judge Majara, appointed Judge

Mahase to act in her stead, and officially established the tribunal that is to investigate the CJ. That was soon followed by statements condemning the CJ's suspension from several international legal and human rights organisations. They said that in securing her suspension, the government disregarded valid court orders, and they called for a return to the Rule of Law.

On September 13, lawyers acting for the CJ wrote to the government complaining that the King had been advised to suspend her, and had done so, despite existing court orders. The letter said that the CJ's legal team had advised their client to ignore the suspension as it was a "nullity". She would be taking up her duties as normal when she returned from an official conference, said her lawyers, and they would be investigating contempt of court proceedings and a declarator against the Prime Minister for the action taken to suspend her.

Two days later the government obtained the court order from Judge Mahase barring the CJ from entering the court complex or carrying out any work associated with her position.

The order sought by government went further, however, greatly ramping up the situation and characterizing the letter from the CJ's team as "subversive". It asked that the letter which said that the suspension of the CJ was a "nullity" and that she would ignore it and continue her duties as before, be declared unlawful by the ACJ. The government also said that the letter "incites violence" and that it threatened the peace and stability "of the government". Further, it was unlawful and subversive as defined by the country's Internal Security Act.

The government wants the court to order that the law society of Lesotho investigate the CJ's lawyers, who wrote the letter, under the Legal Practitioners Act. This investigation was required as the letter "aimed at disturbing the peace and stability of His Majesty's government".

On 18 September the Lesotho government issued a further statement in response to the international organisations that had criticized the CJ's suspension given the existing high court decisions.

The government said it was increasingly worried by the way in which certain international organisations had "taken to issuing unfounded statements based on unverified, yet disparaging, claims". The government mentioned [statements by Amnesty International](#) [2] and by the [Commonwealth Magistrates and Judges Association](#) [3] by name.

The government comment highlighted that fact that these statements were issued so soon after the events to which they reacted and that response had not first been requested from government.

Local media, following up the story, reported that "three experienced judges from Uganda, Tanzania and Zimbabwe" had been appointed to form the tribunal that would hear the misconduct charges against the CJ.

The attorney-general, Haae Phoofolo was also asked to respond to allegations that the decision to suspend the CJ was in contempt of court. He denied that the government had acted unlawfully and said it "stood ready to defend its decision before the courts of law."

The Lesotho Times quotes him as saying, "We are prepared to respond in the courts of law but I am not in a position to disclose how we are going to do it."

The AG then raised the problem that the court of appeal was dysfunctional, and blamed the situation on "three lawyers" who had gone to court.

This is a reference to a full bench decision, earlier this year, which found the government had unlawfully fired the properly-mandated president of the court of appeal, retired SA judge, Robert Nugent, and had thereafter, also unlawfully, re-installed the former president of the court, Kananelo Mosito, who resigned after an impeachment tribunal recommended to the King that he be dismissed.

The court held that Mosito's appointment was unlawful and, as the government has not made any replacement appointment, the country's apex, appeal court has not functioned since the judgment.

Recapping the history of the dispute between the present government and the CJ, [the Times quotes an affidavit from the CJ submitted to court earlier this year](#) [4] in which she said that ongoing efforts to remove her included threats from cabinet ministers and other high officials, as well as demonstrations by a group that formed behind the slogan "Hands off Mosito".

These campaigners have said they are unhappy that the appointment of Mosito has been "delayed", and they wrote to the Prime Minister earlier this year "imploing him to immediately dismiss (the CJ) for allegedly plotting with the opposition to topple the government."

Reacting to the ongoing crisis in Lesotho, the [Democratic Governance and Rights Unit](#) [5] said it was "deeply concerned" about events that resulted in the CJ's suspension "in violation of the Constitution and a court order" [6].

The DGRU quoted from the constitution of Lesotho as to the correct steps to be taken in relation to the suspension and investigation of a Chief Justice and said these had not been followed. The statement also urged that the Latimer House principles be strictly followed, including the clause which states, "Disciplinary proceedings that might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness."

[Amnesty International statement](#) [7]

[Commonwealth Magistrates and Judges Association](#) [3] [statement](#) [8]

[Lesotho Times article: Chief Justice Majara Suspended](#) [4]

[DGRU statement](#) [9]

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[3] <https://www.cmja.org/downloads/judicialindepence/CLA-CLEA-CMJA%20Statement%20on%20the%20Lesotho%200518.pdf>

[4] <http://www.lestimes.com/chief-justice-majara-suspended/>

[5] <http://www.dgru.uct.ac.za/>

[6] <https://africanlii.org/sites/default/files/DGRU%20statement%20FINAL%20.pdf>

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