

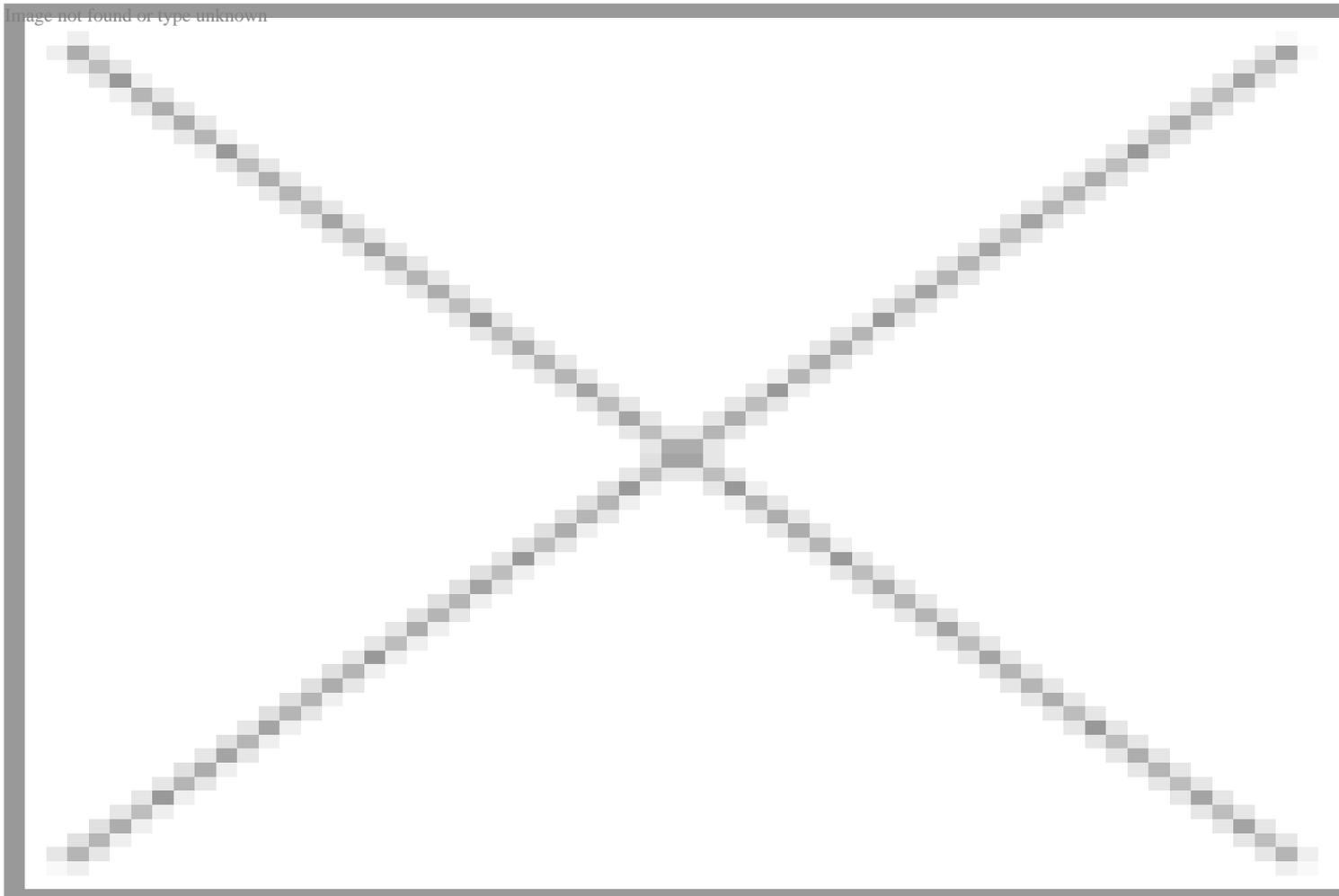
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Lesotho's acting chief justice slows pending litigation brought by sidelined Chief Justice

By Carmel Rickard

THE judicial crisis in Lesotho shows no signs of resolution. While the suspended Chief Justice waits in limbo for a tribunal to investigate government claims against her, the acting chief justice has stepped in to stamp her authority on the situation. Among others, the actions of the ACJ have slowed a planned constitutional court hearing scheduled to deal with the dispute between the government and the CJ.

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IN the midst of the judicial crisis in Lesotho, that country's new acting chief justice has moved swiftly to stamp her authority on the courts and on the processes that had been put in place to prevent the suspension of the beleaguered chief justice.

On Sunday afternoon, 16 September, the new ACJ, Judge Maseforo Mahase, granted an ex parte order

against Lesotho's Chief Justice, Judge Nthomeng Majara stipulating that the latter was barred from the precincts of the palace of justice. She also barred Judge Majara from any activities associated with the role of the CJ.

These are the actual words of that part of the order:

“That (the CJ) be and is hereby interdicted from executing any functions of the Chief Justice of the Kingdom of Lesotho for as long as the suspension pursuant to Legal Notice No 73 of 2018 is legally enforceable.”

The Sunday afternoon litigation was followed up by action on the part of the ACJ that has stalled a sitting of the constitutional court. The three judge bench was to have considered an application brought by the CJ before her suspension. That case had led to an interim order that the political authorities were not to recommend to the King that the CJ should be suspended. The government was also not to take any steps to institute a tribunal. The second part of the order concerned the merits that were raised on both sides around the issue of the government's declared intention to get rid of the CJ. While the government alleged the CJ had not done her job properly, the CJ claimed that the government wanted her out for political reasons and as punishment because she had not sworn in the man they wanted as president of the appeal court.

Because the constitutional court hearing on these issues would have involved the CJ, three foreign judges were requested to hear the matter.

Judge Cagney Musi of SA, tasked with finding suitable judges to preside, had sent through three names to Lesotho. Asked this week what had happened on the question of the three judges, due to sit as a constitutional court to consider the CJ's matter, he said he was initially informed that the Judicial Service Commission felt one of the three was not sufficiently senior to sit in a matter that involved the CJ. He therefore asked a more senior judge to step in, someone whose name was proposed and accepted.

All three judges whose nominations were accepted were “ready and waiting”, he said. Heads of argument had been filed by both sides and a date had been set for the judges to start work.

However, he was then told by a letter from the Lesotho court registrar that the ACJ had decided to hold in abeyance the matter due for hearing at the constitutional court. This was to allow the ACJ herself to study the file.

Though Judge Musi declined to comment further, legal experts said that the situation was “very strange”. It was highly unusual for the ACJ to request that a matter be held in abeyance since the case was ripe for hearing, the judges were ready to proceed, and the matter was in any case not her matter, but a case involving the CJ. “What is there for a head of court to study,” asked the experts. “It is not the ACJ's case, but the case of the parties involved.”

They said that among the questions raised by the ACJ's latest move is whether she wanted to prevent the constitutional court from commenting on and dealing with particular facts related to the history of the litigation. These were that the interim order had specifically ruled that the CJ was not to be suspended nor was a tribunal to be appointed, pending resolution of the matter by the courts, yet she had now been suspended and a tribunal appointed in apparent defiance of the interim order.

In their view, faced with this situation, it was open for the CJ to approach the court and argue that that her suspension was unlawful because of the case pending before the constitutional court.

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