

Our Reference: **EM/kn**

Your Reference:

23 January 2019

TO: ALL MEMBERS

Dear Member

RE: The Rule of Law Situation

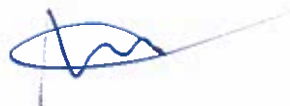
We have followed the legal processes stemming from the recent stay away with appalled interest. We have condemned the violence and also condemned the excessive use of force by the security services in our statement issued on Saturday 19th January 2019. It appears that no lessons were learnt from the Motlante Commission Report.

What has become more worrying to us as the legal profession and the focus of this circular are the events unfolding at the courts.

We have received reports from some members and in other instances we have observed practices that do not show that justice is being done. It would appear that no one is paying attention to the adage "Justice must not only be done but must be seen to be done." Irregular and illegal Pre-trial processes and court processes appear to be collusively used to deny accused persons access to justice

The following instances of apparent injustice being done to accused persons, have been brought to our attention;

1) Mass trials



Incorporated in terms of the Legal Practitioners Act Cap 27:07

- 2) Fast tracked trials
- 3) Routine Denial of bail
- 4) Routine Dismissal of Preliminary applications
- 5) Refusal of access to medical treatment and,
- 6) Trial and detention of juveniles.

We have also received reports of abduction of persons and or their close relatives, assault, torture and denial of access to lawyers.

The Law Society alarmed by these apparent acts of injustice happening at the courts' doorsteps and within the courts, sought audience with the Chief Justice in his capacity as the head of the Judiciary and the head of the Judicial Services Commission.

When these issues were put to the Chief Justice, he appreciated the concerns from the profession. He however was constrained to intervene without interfering with the independence of the judicial officers. He advised that lawyers should resort to the legal remedies that are already available at law like appealing or applying for review of the impugned decisions or actions.

Whilst admitting that there could be an emerging pattern to the decisions and actions by judicial officers, he explained that this could be arising from the similarity of facts and circumstances surrounding most of the cases. He ruled out any directive having been issued by him or the Judicial Service Commission to deny bail or to rule matters in a particular way.

Given the Chief Justice's position, the Councils' advice to members is to use available legal remedies. Through court rulings the issues that are being decried by members may be judicially resolved.

The situation remains concerning and members are encouraged to fully document blatant disregard to established practice. This information will help your Society in its intervention role.



The Council is willing to hear suggestions from members on what other feasible strategies we can adopt to deal with the above issues. In this regard Council is calling for an Extraordinary General Meeting on Monday the 28th January 2019 at 16:00Hours.A formal notice will be published tomorrow.

Yours faithfully



E. MAPARA
EXECUTIVE SECRETARY