



JUDICIARY

PRESS RELEASE

This is a Press Statement in response to the Public Notice issued by the Chief Secretary to the Government dated Friday 12 June 2020.

The Judiciary is an arm of Government established under section 9 of the Constitution whose mandate is to interpret, protect and enforce the Constitution and all laws and in accordance with the Constitution in an independent and impartial manner with regard to only legally relevant facts and the prescriptions of law.

The appointment of the Chief Justice is made under section 111 of the Constitution which provides that the Chief Justice shall be appointed by the President and confirmed by the National Assembly by a majority of two thirds of the members present and voting. Judges are appointed by the President on the recommendation of the Judicial Service Commission.

Once a judge is appointed, all other matters relating to welfare and discipline fall within the exclusive province of the Judiciary and the Judicial Service Commission as per sections 116 and 118 of the Constitution. After the appointment therefore, the Executive is not involved in the internal affairs of the Judiciary.

In terms of judicial tenure, the Constitution provides in section 119 (6) that a judge shall vacate the office upon attaining the age of sixty-five years. A judge may be removed from office only for incompetence in the performance of the duties of his or her office or for misbehaviour, and shall not be so removed except in accordance with subsections (3) and (4) by a petition which has been debated and passed by a majority of the votes of all members of the National Assembly.

Leave for Judicial Officers is spelt out in the 2019 Conditions of Service for Judicial Officers under clause 12 which provides that a Judicial officer shall be entitled, in respect of each calendar year of service, to annual leave days as prescribed in the Second Schedule; that a Judicial Officer shall not commute leave days for cash; and that a Judicial Officer **may opt** to carry forward accumulated leave days towards retirement, provided that such leave days shall not be commuted for cash. Judicial Officers take leave through an established internal application and approval procedure.

As a matter of fact, the accumulated leave days for the Honourable the Chief Justice and Honourable Justice Twea SC JA, are less than what is mentioned in the letters by the Chief Secretary if calculated in accordance with the Conditions of Service for Judicial Officers. Over the years, the Chief Justice and Justices of Appeal have accumulated leave days because they have been prevented from proceeding on leave for all their entitled leave days due to exigencies of their office.

The retirement dates for the current Supreme Court of Appeal bench up to December 2021 is as follows:

Justice of Appeal A.D. Kamanga SC – September 2020
Justice of Appeal Dr. J.A. Ansah SC – October 2020
Justice of Appeal E.B. Twea SC – April 2021
Justice of Appeal D.F. Mwaungulu SC – June 2021
Justice of Appeal A.C. Chipeta SC – July 2021
Chief Justice A.K.C. Nyirenda SC – December 2021

In the case of Honourable Justice of Appeal Dr. Jane Ansah SC, she opted to apply for leave pending retirement and was granted leave pending retirement on 27 January 2020. Honourable Justice of Appeal Dustain Mwaungulu SC, is in the United Kingdom and cannot travel back home due to the lockdown. Other Justices of Appeal of the remaining seven (7) have been prevented from proceeding on leave on the accumulated leave days to ensure that the Supreme Court of Appeal business should not stall. This is because Practice

Direction No. 1 of 2018 issued on 6 February 2018 makes provision for the conduct and disposal of appeals in the Supreme Court of Appeal as follows:

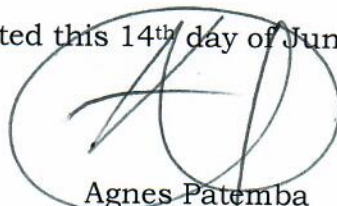
- a) **WHEN** the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be constituted by the Chief Justice presiding and Eight other Justices of Appeal.
- b) **PROVIDED** that in the event where for any reason it is not possible or practicable to secure the presence of Nine Justices of Appeal, it shall be constituted by the Chief Justice presiding or other member presiding as may, by prior practice, be designated and Six other Justices of Appeal.

This means that for the Supreme Court of Appeal to form a quorum in substantive matters not of an interlocutory nature, it must be constituted in the manner dictated by the aforementioned Practice Direction.

Finally, regarding the succession plan for the Supreme Court of Appeal, the Judiciary wrote the Ministry of Finance and Economic Planning on 11 February 2020, requesting funds to initially appoint four Justices of Appeal. We equally sought authority from the office of Department of Human Resource and Management Development (DHRMD) and also engaged the Minister for Justice and Constitutional Affairs, to lobby for funds to appoint the four Supreme Court of Appeal Justices. Government responded that it had no funds to appoint four Justices of Appeal.

The Judiciary asserts that the Chief Justice and Justices of Appeal shall continue to discharge their functions as per their constitutional mandate.

Dated this 14th day of June 2020

A handwritten signature in black ink, consisting of a large, stylized 'A' and 'P' intertwined, enclosed within a circular scribble.

Agnes Patemba

REGISTRAR OF THE HIGH COURT AND SUPREME COURT OF APPEAL