



MAGISTRATES AND JUDGES ASSOCIATION OF MALAWI

PRESS STATEMENT BY MAJAM ON CONTINUED ATTACKS ON JUDGES AND THE JUDICIARY.

The Magistrates and Judges Association of Malawi (MAJAM) is a professional body whose membership derives from all Judicial Officers in Malawi. The mandate of MAJAM is to oversee the professional and general conduct of Magistrates and Judges in Malawi. MAJAM is affiliated to the Commonwealth Magistrates and Judges Association (CMJA). Apart from promoting integrity and accountability amongst judicial officers, it is within the objects of the Association to safeguard judicial independence, particularly in circumstances where the same is in jeopardy. It is in this regard that we make this statement.

The Malawi Judiciary is an arm of government with the mandate as enshrined under Section 9 of the Republican Constitution as follows:

“The Judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.”

As such in exercising their functions and duties, Magistrates and Judges are only guided by the law and the facts at hand, while being alert to their oath of office which clearly calls on them to dispense justice without fear or favour, affection or ill will. The Constitution under Section 103 (1) further fortifies judicial independence in the following fashion;

“(1) all courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority”.

On 3rd day of February, 2020 the High Court sitting as a Constitutional Court comprising five judges delivered a landmark judgment nullifying the 2019 presidential elections. As in every case before the courts, an aggrieved party is accorded further redress by way of an appeal. It is in this regard that having been dissatisfied with the Constitutional Court’s judgment, the Respondents lodged their appeal in the Supreme Court of Appeal. The Supreme Court delivered

its decision on 8th day of May, 2020 upholding the high court's judgment. The general expectation was that as a nation that believes and respects the rule of law, the appellants and all concerned parties would respect and accept the Supreme Court's decision and move forward.

It is however worrisome to note that as was the case following the Constitutional Court's judgment, there has been a wave of open attacks on the judges and the Judiciary in general, this time emanating directly from the Head of State. In his recent speeches, including in the State of National Address (SONA), the President has unwaveringly castigated the judges branding them authors of a "coup d'etat" by virtue of ordering a fresh election. His sentiments are a vivid display of disrespect for the court's judgment and therefore a threat to judicial independence and the doctrine of separation of powers which are primary characteristics of a democracy.

Our observation is that the President has based his attack on 'Judicial Accountability'. However, it should be made clear to the State President that the judiciary is still accountable and transparent. For example, in executing their mandate, cases are heard in the open courts, and reasons are given for the decisions made based on relevant facts, evidence and the prescriptions of the law.

It is our considered view that these continued attacks on the judges by the State President seriously undermine judicial independence and coming from the first citizen have the ability to spur this country into a state of lawlessness should the citizenry opt to emulate the attitude exhibited by the highest office. For example, the State President in His SONA purports to say that Parliament is above the Judiciary. According to the Constitution, the three branches of government are interdependent. Therefore, it is not true that Parliament is above the Judiciary. This has to be corrected as it is misleading the public. There is no parliamentary supremacy in Malawi. We are in a constitutional democracy where the Constitution is supreme.

All what the judges did was to carry out their duty as called upon by the law. As a professor of law, we expected the State President to rise above petty politics and to act as a model to his subjects in upholding and respecting the rule of law which is the cornerstone of every democratic society.

Being a body whose membership comprise of these Judges, among others, we would like to condemn in the strongest terms such continued attacks on the Judiciary by the State President and any conduct bordering on disregard and disrespect of the court's decision . The conduct of the State President in this regard does not only undermine the rule of law but also the integrity

and independence of the Judiciary. We are therefore of the view that the conduct displayed by the State President is unnecessary and uncalled for. We request him to respect the court's decisions and lead this country in moving forward.

In conclusion we call upon all citizens with no exception to the presidency, to respect and uphold the rule of law.

Dated this 7th day of June 2020



His Hon. Howard Pemba
President



His Worship Peter M.E Kandulu
Secretary General