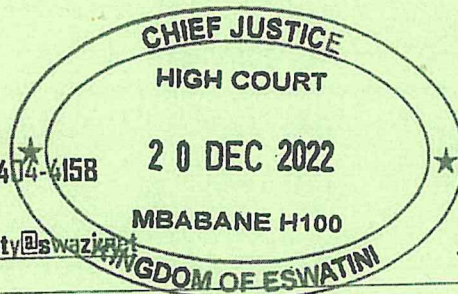


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JUDICIAL CONDUCT COMPLAINT

IN RE: THE HONOURABLE CHIEF JUSTICE, MCB MAPHALALA

A. INTRODUCTION

1. The Law Society of Eswatini hereby lodges a complaint against the Honourable Chief Justice for committing impeachable acts of serious misbehaviour. The complaint is lodged in terms of Section 158 of the Constitution.
2. The Chief Justice is the head of the judiciary and is responsible for the administration and supervision of the judiciary. The judiciary is responsible for the administration of justice and the maintenance of the rule of law.
3. As head of the judiciary, the Chief Justice is the chief custodian of law in the country and his primary function is to uphold the Constitution and ensure that there is the proper administration of justice in the country and that the rule of law is maintained.

sensitivity- Public

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4. The office of the Chief Justice is an office that is subject to the Leadership Code of Conduct in terms of Chapter XVI of the Constitution. Section 239 of the Constitution provides that the Leadership Code seeks to ensure that those in leadership, whether elective or appointive-
- 4.1. are transparent in their activities and accountable to the people they represent or serve
 - 4.2. are committed to the rule of law and administrative justice;
 - 4.3. adhere to the principles of service for the common good;
 - 4.4. do not abuse office; and
 - 4.5. do not engage in conduct that is likely to lead to corruption in public affairs.
5. The Chief Justice holds an office that is mentioned in Section 241(2) of the Constitution. In terms of Section 240(b) of the Constitution a holder of an office referred to in Section 241(2) of the Constitution is prohibited from engaging in conduct that is:
- (i) likely to compromise the honesty, impartiality and integrity of that officer;
 - (ii) likely to lead to corruption in public affairs; or
 - (iii) which is detrimental to the public good or welfare or good governance;
6. The Chief Justice is also subject to the Judicial Code of Ethics for the Judiciary of Eswatini which is a Code of Ethics that is binding to judges including the Chief Justice.

7. When the Chief Justice acts in contravention of either the Constitution, law in general, or his oath of office, or engages in conduct that is in violation of the Leadership Code of Conduct and/or engages in conduct that violates the Judicial Code of Ethics, such conduct constitutes serious misbehaviour and is a ground for his removal from office.
8. It was recognized by the Judicial Service Commission (JSC) that *"judges are bound by the Constitution and principles applicable to judicial conduct. They are also bound by precedent and ethics governing judicial offices..."* It is now settled law that a violation of the Constitution and principles applicable to judicial conduct and ethics governing judicial office constitute serious misbehaviour.
9. In terms of Section 158(2) of the Constitution, a justice of the Superior Court shall not be removed from office except for stated serious misbehaviour or inability to perform the functions of office arising from infirmity of body or mind.
10. This complaint arises from acts of serious misbehaviour by the Chief Justice. The term serious misbehaviour was defined as *"any conduct on the part of the Chief Justice, which affects his ability to discharge his oath of office or impacts on the administration of justice. The position of Chief Justice requires the incumbent to be above reproach and not to be guilty of any indecorous behaviour. The position requires dignity and decorum given its significant place in society"*
11. The Chief Justice takes an oath that he "...will do right to all manner of people according to the law without fear or favour, affection or ill will". This means that he swears that he will always act in accordance with the law and impartially. Any conduct by the Chief Justice whereby he violates the law or he acts partially is a breach of his oath of office.

12. The Chief Justice has committed serious misbehaviour by breaching his duty to uphold the Constitution, in the appointment of acting judges, the establishment of the Commercial Division of the High Court, engaging in conduct that is in breach of the Leadership Code of Conduct and engaging in conduct that violates his oath of office and judicial code of ethics.

13. The acts of serious misbehaviour by the Chief Justice are stated below.

B. ACTS OF SERIOUS MISBEHAVIOR BY THE CHIEF JUSTICE

B1. Unconstitutional appointment of acting judges- Contravention of Section 153(5) of the Constitution.

14. The Chief Justice has violated the Constitution by appointing acting judges for successive one-month periods. Regarding these appointments, the Chief Justice relies on the powers conferred on him by Section 153(5) of the Constitution which grants the Chief Justice power, to make an acting appointment where the duration does not exceed one month, unrenewable after consultation with the JSC.
15. By appointing acting judges on a month-by-month basis, the Chief Justice circumvents the Constitution and renews the appointment after the expiry of the one-month term allowed by the Constitution. In this way, the Chief Justice defeats the intention and spirit of the Constitution effectively appointing acting Judges for periods longer than the duration allowed by the Constitution thereby evading the Constitution.
16. The power to appoint judges is controlled by the Constitution and must be exercised as provided in the Constitution. It is no coincidence that the power to appoint judges is

controlled by the Constitution. Judges play a vital role in the administration of justice. They determine the rights of citizens. The appointment of judges must be lawful and beyond reproach. Justice in the courts must be administered by properly appointed judges for the public to have confidence in the administration of justice and the decisions of the courts.

17. The proliferation of acting appointments of judges by the Chief Justice in violation of the Constitution results in justice being administered by judges who have no ultimate accountability other than to the Chief Justice. This compromises those Judges' exercise of their independent judgement in cases where they are aware of the interest or will of the chief Justice. This erodes public confidence in the decision of the courts and puts into question the validity of the judgements delivered by the judges who are irregularly appointed.
18. The Chief Justice violates the Constitution by appointing acting judges for successive periods of one month. He does what the Constitution prohibits him from doing - making acting appointments for a duration above a month. He effectively renews the acting appointments when the Constitution says it cannot be done.
19. Section 153(5) of the Constitution reads:

Notwithstanding the provisions of subsections (3) and (4), the Chief Justice after consultations with the Judicial Service Commission may make an acting appointment where the duration does not exceed one month, unrenovable. (Own Underlining)

20. This provision is clear. The Chief Justice may only make an acting appointment of a judge where the duration does not exceed a month and he cannot renew the appointment.

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His power extends only to making an acting appointment for one month only and that acting appointment cannot be renewed. The acting appointment can only be extended for a period not exceeding 3 months to enable the acting judge to deliver judgement or doing any other thing concerning proceedings that were commenced before the acting judge prior to the expiry of the acting appointment in terms of Section 153(6) of the Constitution.

21. The extension of the acting appointment is done only to enable the acting judge to complete proceedings commenced during the one-month acting appointment.

22. Section 153(6) reads:

A person whose appointment to act as a Justice of a superior court has expired may, with the consent of the King acting on the advice of the Chief Justice or the Chief Justice after consultation with the Judicial Service Commission, continue to act for such a period not exceeding three months as may be necessary to enable that person to deliver judgement or to do any other thing in relation to proceedings that were commenced before that person previously to the expiry of the acting appointment.

23. In the case of the month-to-month appointments employed by the Chief Justice, the acting judges deal with new matters on each of the months that the Chief Justice appoints them which makes their successive appointments renewals and not extensions of appointment to complete proceedings commenced during the one-month acting appointment. For example, some of the judges act for an entire session or successive sessions of the Superior Courts. The successive periods of acting appointments are renewals and as such, they violate the Constitution and render the decisions handed by the acting judges invalid and unconstitutional. This has developed the concept of

“permanent Acting Judges” clearly an oxymoron in as much as it is a clear violation of the Constitution of the Kingdom.

24. This results in justice being dispensed by judges not properly appointed which brings into disrepute the administration of justice in the country and undermines public confidence in the judicial system.
25. The Chief Justice acts in a manner inconsistent with the Constitution and his oath of office which requires him to act in accordance with the law. The Chief Justice wilfully contravenes the Constitution by making acting appointments for successive periods of one month which are effectively renewals of the acting appointment when the Constitution prohibits this.
26. The wilful contravention of the Constitution is an act of serious misbehaviour by the Chief Justice which justifies his removal from office in terms of Section 158 of the Constitution.
27. As the Chief Justice, he is responsible for the administration of justice in the country and the rule of law. He has a duty in terms of Section 2 of the Constitution to at all times uphold and defend the Constitution. He is subject to the Constitution which he must uphold at all times. Wilfully violating the Constitution is acting inconsistently with the Leadership Code of Conduct which requires him to uphold the rule of law and administration of justice and not abuse office.
28. The Chief Justice’s flagrant violation of the Constitution in making acting appointments:
 - 28.1. violates the rule of law;
 - 28.2. is an abuse of office;

28.3. is conduct that is likely to lead to corruption and detrimental to the public and good governance; and

as such violates the Leadership of Code of Conduct specified in the Constitution.

29. The contravention of the Constitution by the Chief Justice is conduct inconsistent with his oath of office which requires him to act in accordance with the law. It is conduct that is in breach of his duty to uphold the Constitution and is in violation of his oath of office. This is conduct that constitutes serious misbehaviour and is a ground for his removal from office.

B1.1 Acting Appointment of judges- Abuse of office and improper use of state resources

30. As stated above, Section 153(5) of the Constitution vests power in the Chief Justice to appoint acting judges. This power has to be exercised for a legitimate purpose where the exigencies of the situation so require. The Chief Justice's appointment of acting judges is an abuse of power because it is done for an improper purpose. The Chief Justice appoints acting judges not for the purpose envisaged in the Constitution (legitimate purpose) but as a means of establishing patronage in the legal fraternity and the Judiciary, a situation which makes it possible for him to manipulate decisions and thought in the legal fraternity and the Judiciary.

31. The Chief Justice justifies the acting appointments by using a non-existent backlog of cases as an excuse for making acting appointments. In truth, the Chief Justice uses the acting appointments as a tool for patronage and keeping some members of the legal profession loyal and beholden to him. The Chief Justice does this without regard to the prudent use of resources. Instead of using resources prudently to fix the crumbling

infrastructure in the Courts around the country, the Chief Justice opts to use those resources to employ on an acting basis, Judges who do not even have the resources to work with and cases to deal with. This results in the permanent judges not being allocated cases by the Chief Justice who allocates the cases to acting judges. The country now has more judicial officers per capita taking into account the population it serves.

32. The Chief Justice uses acting appointments to manipulate judicial decision-making and not to deal with situations that may arise requiring the appointment of an acting judge. He uses the acting judges to deal with certain matters on which he seeks to exercise control. The acting judges are rendered amenable to manipulation and to being loyal and beholden to him as their patron upon whom they depend for their ongoing appointment and reappointment. This creates an environment where the judges and even legal practitioners are vulnerable to conduct in compromise of integrity, honesty and impartiality an environment which the Constitution seeks to avoid.
33. The appointment of Acting Judges every month is not necessary and cannot be justified. It is an abuse of taxpayers' money. This is an abuse of office by the Chief Justice and is conduct that is detrimental to the public good and good governance and is likely to lead to corruption in public affairs. It is conduct that is inconsistent with the Leadership Code of Conduct of the Constitution, Section 239(d).
34. The appointment of acting judges by the Chief Justice in the manner in which it is done gives rise to a conflict of interest. It violates the Leadership Code of Conduct with regard to conflict of interest. Section 240 of the Constitution provides that a person who holds the position of justice of the superior court of Judicature shall not engage in

conduct that is likely to compromise the honesty, impartiality and integrity of that officer; lead to corruption in public affairs; or which is detrimental to the public good or welfare or good governance.

35. The conduct of the Chief Justice is inconsistent with the requirements specified in Section 240 of the Constitution and is a breach of the Constitution and his duty to uphold the Constitution. It violates his oath of office. Judges employed for a month at a time with the hope of securing an appointment or reappointment for another duration or who hope for continuous one month at a time appointment are placed in a situation where they are vulnerable to partiality, lack of integrity and corruption as they may believe that for them to get such reappointments, they must pass judgements which they believe are in line with views or position of the Chief Justice.

B2. Contravening Section 150(6) of the Constitution in establishing the commercial division of the High Court

36. The Chief Justice has established the commercial division of the High Court. Section 150(6) of the Constitution empowers the Chief Justice to establish a such division of the High Court as he may determine after consultation with the Minister of Justice and the President of the Law Society. The Constitution clearly provides how the power must be exercised. Whilst the Chief Justice has the power to establish divisions of the High Court, he is however required to consult with the Minister for Justice and the President of the Law Society.
37. The consultation by the Chief Justice must happen prior to the establishment of the division of the High Court. Section 150(6) of the Constitution provides that:

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There shall be such divisions of the High Court consisting of such number of Justices respectively as the Chief Justice may determine after consultation with the Minister responsible for Justice and the President of the Eswatini Law Society.

38. The purpose of the consultation with the President of the Law Society is to allow for the input of the law profession in the establishment of the division of the High Court. The consultation must happen prior to the establishment of the division of the High Court. The Failure to consult with the Law Society deprives the Law Society of the right to be consulted in the establishment of a division of the High Court. This constitutional right and obligation of the Law Society to participate as a consultant in the establishment of a division of the High Court can not be lawfully taken away by the Chief Justice. Yet he has done exactly that with total disregard for the Constitution.
39. This is detrimental to the public good and good governance and is an abuse of office. The conduct of the Chief Justice is inconsistent with his duty in terms of the Leadership Code of Conduct and would justify his removal from office.
40. The Chief Justice has established the commercial division of the High Court. In doing so he did not consult with the law profession through the President of the Law Society prior to establishing the commercial division of the High Court. The Chief Justice has contravened Section 150(6) of the Constitution by establishing the commercial division of the High Court without prior consultation with the President of the Law Society as required by the Constitution.
41. It is important that the judiciary acts in accordance with law for society to have confidence in the administration of justice. If courts that dispense justice are not established in accordance with law, public confidence in the judiciary, which is central

to rule of law and proper administration of justice, will be eroded. Moreover, decisions of the division in question may be challenged on the basis of the unconstitutionality of its establishment thereby throwing the Judiciary and Judicial system into disarray.

42. Decisions made by a court that has been improperly established will be invalid. The contravention of the Constitution by the Chief Justice in establishing the commercial division of the High Court without consultation brings the judiciary and the administration of justice into disrepute.
43. The Chief Justice has a duty at all times to uphold the Constitution and to act in accordance with law and his failure to do so is an act of serious misbehaviour for which he is liable to be impeached in terms of Section 158 of the Constitution.
44. The Chief Justice's breach of Section 150(6) of the Constitution also constitutes an abuse of office which is prohibited by Section 239(c) of the Constitution, which is the Leadership Code of Conduct and is a violation of the Chief Justice's oath of office to at all times act in accordance with law.

B3. The Chief Justice's Interference with the administration of justice, violating Court Orders, conflict of interest and defeating or obstructing the course of justice

45. The Chief Justice has interfered with the administration of justice, violated court orders, engaged in conduct where he has a conflict of interest and obstructed the course of justice. The details are set out below.

B3.1 Interference with the administration of justice

46. The administration of justice by the courts is carried out by the courts according to prescribed procedures by appointed officials. Conduct which obstructs the procedures or the officials involved or which is designed to prevent the courts from properly carrying out their function of dispensing justice to citizens who come before them cannot be tolerated.

47. The Chief Justice has unlawfully interfered in the administration of justice before superior courts. The following cases are instances where the Chief Justice has interfered with the administration of justice.

47.1. **The Chief Justice of the Kingdom of Eswatini & the Judicial Service Commission v The Clerk of Parliament, the Speaker of the House of Assembly & two other High Court Case No. 906/2021**

The Chief Justice of the Kingdom of Eswatini & the Judicial Service Commission v The Clerk of Parliament & Three others Supreme Court Case No. 28/2022;

47.1.1. This is a matter where the Chief Justice is a litigant against Parliament. The Chief Justice approached the Court seeking an Order declaring that;

47.1.1.1. the office of the Master of the High Court under the judiciary is independent from any of organ of State but only subject to the Constitution;

47.1.1.2. Parliament has no power to enquire into the administrative and financial operations of the office of the Master of the High Court.

47.1.2. The Chief Justice also seeks an interdict, interdicting the Select Committee of Parliament from investigating and/or probing the office of the Master of the High Court with regard to its administrative and financial functions;

47.1.3. When the matter came before the High Court for hearing, the High Court directed that due to its importance in that it deals with the functions and powers of two important organs of state, Parliament and the Judiciary, it was necessary that the matter be heard by a full bench of the High Court. The judge hearing the matter his Lordship Justice T Dlamini issued an order that the matter be referred to a full bench of the High Court and that owing to the fact that the Chief Justice was involved as a litigant in the matter, the Honourable Principal Judge, by virtue of being the most senior Justice of the High Court, is ordered to empanel a full bench to hear and decide the matter.

47.1.4. Despite this order and being aware of it, the Chief Justice decided to empanel the full bench of the High Court comprising Justice Maseko, Justice BS Dlamini and Justice BW Magagula.

47.1.5. The Chief Justice wilfully violated the court order that directed that the Principal Judge be the one to empanel the Full Bench. He proceeded to empanel a bench in a matter in which he is personally

involved as a litigant, the Chief Justice is the First Applicant in the matter, and the Second Applicant is the JSC which is chaired by the Chief Justice. He is the head of the JSC as its Chairman. He also is the head of the judiciary which is responsible for hearing and determining the dispute between the Chief Justice and Parliament.

47.1.6. The judgment directing that the matter be empanelled by the principal judge was delivered on 8th April 2022. It was delivered in open court in the presence of the Chief Justice's legal representative. On 29 April 2022, the Chief Justice, ignoring the court order proceeded to empanel the bench.

47.1.7. The Chief Justice is guilty of violating a court order, conflict of interest, obstruction of justice, and violating his oath of office and the Judicial Code of Ethics, all of which constitute serious misbehaviour justifying his impeachment and removal from office. The Chief Justice acted in a manner inconsistent with the Constitution and the requirements of his office. Part IV of the Judicial Code of Ethics requires that a judicial officer should always comply with the law of the land and that he should always, in the discharge of official duties, act honourably, and in a manner befitting the judicial officer. The Chief Justice acted in a manner not befitting his office.

47.1.8. The Chief Justice was disqualified from exercising any of his functions in relation to a matter where he is a litigant. Part III (1) of the Judicial Code of Ethics provides that a judicial officer should

disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Part IV (5) of the Judicial Code of Ethics states that a judicial officer should recuse himself from a case if there is a conflict of interest or if there is a reasonable suspicion of bias based upon objective facts.

- 47.1.9. His failure to act in accordance with law is a breach of his oath of office. The conduct of the Chief Justice also violates the Leadership Code of Conduct in the Constitution which requires that a person in an office such as that of the Chief Justice should promote the rule of law and administration of justice, avoid abuse of office and avoid conflict of interest.
- 47.1.10. The Chief Justice engaged in conduct that compromised his honesty, impartiality and integrity and which is detrimental to the public good and good governance. He violated Section 240 of the Constitution by insisting on empanelling a Bench in a matter where he is conflicted by reason of being a litigant.
- 47.1.11. The conflict of interest goes further than the Chief Justice being a litigant. It involves the judiciary and its head being a judge in its own cause. The judiciary in our system is required to be an independent umpire determining disputes between parties. It cannot play this role of being an umpire when it is a party to the dispute. The Chief Justice by his action of involving the judiciary in litigation has brought the judiciary into disrepute.

47.1.12. The Chief Justice has appealed the decision prohibiting him from empanelling a Bench in the matter where he is a litigant. His insistence to empanel the Bench in these circumstances compromises the honesty and integrity necessary for the holder of the office of Chief Justice. It is also detrimental to the public good and welfare as well as inimical to good governance. His conduct perpetrates corruption in public affairs, especially against the background of his choice of appointees to the Full Bench which was in violation of a Court order. He empanelled a Judge who had been sitting with him in the JSC for a long period of time prior to his surprise appointment in the midst of the Chief Justice's litigation with Parliament. The Chief Justice also empanelled a Judge whom he had persistently appointed as an acting Judge in both the Industrial Court and High Court over a period spanning years.

47.1.13. The allocation of Judges to hear matters commencing at the High Court right through to finality, first on appeal and thereafter in a review under section 148(2) of the constitution also violates the Leadership code of conduct, especially in circumstances where there is a Principal Judge at the High Court whom the Chief Justice has neglected delegating duties. No matter how urgent a matter may be, it cannot be enrolled without being taken to the Chief Justice who is sometimes not readily available resulting in delays in the adjudication of matters.

47.2. **The Director of Public Prosecutions v Mfanukhona Johannes Dlamini & Another Case No. 18/2018**

47.2.1. In this matter, the Chief Justice was asked by the Director of Public Prosecutions ("the DPP") office to recuse himself from the matter because of previous comments he is alleged to have made to the Deputy Director of Public Prosecutions before the commencement of the criminal trial at the High Court. The Chief Justice is alleged to have called the Deputy Director of Public Prosecutions into his chambers and told him not to prosecute the case of the Appellant because it is not a matter of priority or importance.

47.2.2. The Deputy Director of Public Prosecutions also complained about utterances made by the Chief Justice on a number of occasions when the matter was before the Supreme Court and postponed. The Chief Justice is alleged to have said that the issue of the sentence was paramount, and the Crown must address the issue of the sentence in the case. This was before the matter was heard.

47.2.3. In response to the recusal application, the Chief Justice filed an affidavit disputing the allegations. He proceeded to empanel the bench that heard the application where he had been asked to recuse himself. Put in another way, the Chief Justice appointed the judges who heard the application for the Chief Justice to recuse himself and in which he had filed an affidavit. The Chief Justice empanelled a bench to hear a

Code apply are committed to the rule of law, do not abuse office and do not engage in conduct that is likely to lead to corruption.

47.3.8. The Chief Justice's interference also violates Section 140 of the Constitution in that his actions constitute conduct that is likely to compromise his honesty, impartiality and integrity and that is likely to lead to corruption and which is detrimental to the public good and good governance.

47.3.9. The Chief Justice's conduct in this matter constitutes serious misbehaviour for which he should be impeached and removed from office following the processes set out in Section 158 of the Constitution.

B4 The Chief Justice abused power, breached the Leadership Code and violated his oath of office, and the Judicial Code of Ethics by coercing an employee of the High Court to withdraw a complaint of sexual harassment, victimization and nepotism against him.

48. On 16 December 2021, an employee of the High Court lodged a complaint against the Chief Justice with the Chairman of the Civil Service Commission ("the CSC"). The complaint was copied to the Minister of Public Service, the Principal Secretary in the Ministry of Public Service, the President of the Law Society, all members of the CSC and the Registrar of the Supreme Court.

49. In the complaint, the employee stated that she was sexually harassed by the Chief Justice who on diverse occasions made unwanted sexual advances. This started when the Chief Justice was a judge of the High Court and continued when he was appointed as the Chief Justice. After the employee continuously refused his sexual advances, the Chief Justice removed her from working with him at the Supreme Court and demoted her to a lesser position.
50. The employee also accused the Chief Justice of nepotism by employing his relative and putting her in charge of the position that was held by the employee who is the complainant. When the employee laid the complaint, she was being victimised and was coming to work daily and not offered any work. She said this had been going on for some time. She complained that the Chief Justice had marginalised her, blocked her number and was avoiding speaking to her. At the time she says there were attempts to transfer her.
51. The following day after laying the complaint she withdrew the complaint stating that she was asked by the Chief Justice to do so and that the Chief Justice undertook to restore her to her position.
52. The Chief Justice's conduct aforesaid breached the Leadership Code of Conduct. He abused power and engaged in conduct that was likely to lead to corruption. The Chief Justice also breached his oath of office and the Judicial Code of Conduct.

B5 The Chief Justice acted in a manner inconsistent with the Constitution, the law, abused his powers and violated his oath of office by banning attorney Muzi Simelane from appearing before the courts of the country.

53. On 11 April 2018, the Chief Justice issued an order banning an attorney Muzi Simelane from appearing before any court in the country. The banning order reads, *"In exercise of the powers vested in by Sections 139(5) and 142 of the Constitution, your firm and yourself are hereby barred from appearing before any court in Swaziland until you purge your contempt"*.
54. Section 139(5) of the Constitution merely provides that the Chief Justice is the head of the judiciary and is responsible for the administration and supervision of the judiciary. Section 142 of the Constitution deals with the administrative functions of the Chief Justice and empowers him to make rules for regulating the practice and procedure of the superior courts and subordinate courts including specialised and local courts as well as the powers of a judicial officer.
55. Neither of these provisions of the Constitution confers power upon the Chief Justice to ban an attorney from practising in the courts of the country. The only law that deals with the disbarring of an attorney is the Legal Practitioner's Act. The Legal Practitioner's Act provides for the process of disbarring an attorney. The disbarring of an attorney is done following the due process specified in the Legal Practitioner's Act which is the law regulating the legal practice.
56. The Chief Justice acted ultra vires his powers. He has no power in terms of the Constitution or any law to ban an attorney from practising in the court of the country. His actions of banning attorney Muzi Simelane from practising are illegal, invalid and a naked abuse of power.
57. The Chief Justice's actions violate Section 32 of the Constitution which confers upon any person the right to practice a profession. The Chief Justice's actions of banning Mr

Simelane also violate Section 33 of the Constitution in that the decision to ban Mr Simelane was not only outside the law but was taken without affording him a hearing. Section 33 of the Constitution provides that any person appearing before anyone exercising administrative authority has a right to be heard and treated justly and fairly in accordance with the requirements imposed by law.

58. The Chief Justice acted outside the law. He banned an attorney from practice without any legal basis. There is no law that empowers the Chief Justice to ban an attorney from practising.
59. The Chief Justice abused his power as the head of the judiciary by banning an attorney from practising in the courts of the country.
60. The Chief Justice violated his oath of office by acting outside of the law and by being partial and acting with ill will towards Mr Simelane and denying the right to practice his profession and depriving him of his livelihood without due process of law.
61. The Chief Justice's action of banning an attorney without due process of law brings his office, the judiciary and the administration of justice into disrepute. His actions were lawless and without any legal authority.
62. The Chief Justice of the country has a duty to act in accordance with the law and not to make lawless decisions that affect other people's rights. Banning orders without due process have no place in a constitutional dispensation. The public confidence in the judiciary is eroded by the lawless actions of the Chief Judge of the country.
63. The Chief Justice's action of banning an attorney from appearing in the courts of the country without due process of law and without any legal authority granting him those

powers erodes public confidence in the judicial system. The public will not have confidence in a judicial system where the Chief Judge will not follow the law but take capricious decisions that affect the rights of others without due process of law.

64. The Chief Justice's conduct aforesaid constitutes serious misbehaviour that justifies his removal from office in terms of Section 158 of the Constitution.

CONCLUSION

65. The Law Society is filing this complaint and requests that due process be followed in line with the requirements of Section 158 of the Constitution. We request that the Honourable Minister act in accordance with the constitutional responsibility imposed by Section 158 of the Constitution by convening the *ad hoc* committee to deal with this complaint.
66. Honourable Minister, as a Law Society we cannot overemphasize the importance of the rule of law which is the foundation and backbone of a proper and functioning society. It is important that the rule of law be adhered to. The complaint must be dealt with in accordance with law.
67. Our statutory mandate as the Law Society is to promote the rule of law. We cannot afford to abdicate on this critical responsibility which is imposed conferred on us by the laws of the country.
68. We are witnessing the erosion of the rule of law and public confidence in the judicial system. The Chief Justice is at the forefront of the assault to the rule of law. His role as head of the judiciary is that of chief custodian of law. Instead of fulfilling this important constitutional function, the Chief Justice has consistently breached the Constitution, the

law, the Judicial Code of Ethics and his oath of office. He has abused power and interfered with the administration of justice.

69. He has brought the judiciary into disrepute and failed to promote and maintain proper administration of justice and the rule of law. The public is desirous to have a functioning judicial system that promotes the proper administration of justice and the rule of law.
70. The complaint states clearly the serious misbehaviour committed by the Chief Justice which warrants his removal from office as provided in Section 158 of the Constitution. The serious misbehaviour of the Chief Justice cannot be ignored. The complaint must be processed and dealt with according to law. This is important to restore the respect and dignity of the courts and the judicial system for which public order is dependent. Investors will only have confidence in a country where the rule of law reigns supreme.



SECRETARY GENERAL
THE LAW SOCIETY OF SWAZILAND



CC: The Honourable Chief Justice

High Court Building

Hospital Hill

Mbabane

Sensitivity- Public

President: M. Magagula, **Vice President:** S. Mdladla, **Secretary General:** C. Simelane,
Treasurer: J. Rodrigues, **Members:** T. Sibandze, L. Magongo, K. Magagula, Z. Shabangu
L. Methula

CC: **The Chairman**

Civil Service Commission

Inter-Ministerial Building

Mbabane

Sensitivity- Public

President: M. Magagula, **Vice President:** S. Mdladla, **Secretary General:** C. Simelane,
Treasurer: J. Rodrigues, **Members:** T. Sibandze, L. Magongo, K. Magagula, Z. Shabangu
L. Methula