



STATEMENT ON THE APPOINTMENT OF CONSTITUTIONAL COURT ACTING JUSTICES

The President's Minute (302/2023) of 6 October 2023 appointing Acting Justices to the Constitutional Court records a very significant development and decision that should be appreciated by all in the judiciary and the legal fraternity as a whole.

The President of the Republic of South Africa, President Cyril Ramaphosa, acting in terms of section 175 (1) of the Constitution of the Republic of South Africa, 1996, on the recommendation of the Minister of Justice and Correctional Services, Mr Ronald Lamola, with the concurrence of our most senior judge, Chief Justice Raymond Zondo, appointed as Acting Justices to the Constitutional Court two of our distinguished and able colleagues, Matthew Chaskalson SC and Alan Christopher Dodson SC. He also appointed a known and respected academic at the University of Johannesburg, Professor David Israel Bilchitz.

The Pan African Bar Association of South Africa congratulates these three well-deserving colleagues. None can doubt their abilities and distinguished careers in the legal fraternity. We are certain that they will contribute immensely to the jurisprudence of the Constitutional Court and the country.

We do register however, that the appointment of three white males, all at once, sends a chilling and unfortunate message about gender and race issues in our judiciary and our country. The appointment suggests that our three leaders (in all arms of the State), the President, the Minister and the Chief Justice, all males, and having considered all available personnel, could not find even one able female and black senior practitioner to form part of the three significant Acting Appointments to the Constitutional Court. The legal profession comprises some of the best black legal practitioners, including the most African senior counsel that argued in the Certification (of the Constitution) case of 1996, the first African woman to be awarded the status of senior counsel in South Africa, and indeed a judge in the African Court of Human Rights, to name but a few.

PAN AFRICAN BAR ASSOCIATION OF SOUTH AFRICA

Reg No. 2019/238808/08

82 Maude Street, Sandton, Gauteng, South Africa

T +27 10 900 2170

WWW.PABASA.CO.ZA



Whatever message the President, the Minister and the Chief Justice wanted to send about black legal practitioners and academics, they have missed an opportunity to vanquish the old stereotypes against black professionals and academics. Instead, these otherwise excellent appointments, may be tainted by the unfortunate implication about those who are not white. In fact, this act may have the effect of reinforcing very sad historical stereotypes about women and Africans. We hope this was a genuine act or oversight or unavailability of black and female professionals and academics, rather than a cynical act from a deep-rooted inferiority complex.

Notably, these appointments follow another lost opportunity by the President to appoint what would have been our very first female Chief Justice, duly recommended by the Judicial Services Commission.

Once again, we congratulate our colleagues, in particular, Matthew Chaskalson SC, a very active and respected founder member of the Pan African Bar Association of South Africa. We hope that our statement will be received in the constructive spirit with which it was intended.

Issued by: Chairperson of PABASA and NEC (15 October 2023)